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# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1996

Addendum

REPUBLIC OF KOREA

[10 February 1996]

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## Introduction

1. The Republic of Korea, on 9 January 1995, deposited with the Secretary-General of the United Nations documents of accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (referred to hereafter as the Convention), and the Convention took effect in the Republic of Korea on 8 February of the same year.

2. This initial report for the Convention is written, pursuant to article 19, paragraph 1, with regard to the measures which the Republic of Korea has adopted to fulfil the obligations of the Convention as it acceded to this Convention, and any achievements in fulfilling the said obligations.

3. The Republic of Korea is a democratic republic, centred around a presidential system based on the principle of checks and balances. Sovereignty resides with the people. The Korean Government is composed of three branches, which are legislative, executive, and judiciary. The Government is obligated to guarantee, to the fullest extent, the fundamental freedoms of all individuals. It shall honour international obligations set forth in treaties and respect the generally accepted rules of international law. The President is elected through direct balloting by the people for a term in office of five years, and he is ineligible for re-election.

4. In order to guarantee human rights, drafting and establishing relevant laws and institutions are important. But the strong will of the people and the Government towards enhancing human rights is the most crucial element. Laws and institutions, however beneficial they may be, hold no significance for the enhancement of human rights if unbolstered by the will of the people and the Government. In this regard, the launching of the civilian Government of the Republic of Korea by the Korean people in February 1993 was an important milestone towards improving and enhancing human rights. Firmly rooted in the people's courage and hopes for democracy, this move to establish a civilian Government was boldly made despite the many adversities caused by the division of the Korean peninsular and authoritarian rule.

5. The civilian Government put an end to three decades of authoritarian rule. Based on the support and approval of the people, the Government continues to build a society characterized by respect for human worth and dignity, guarantees of each citizen's creativity and freedom, and acceptance of diversity in society. These efforts are made in order to secure the freedoms and equality of all people, and to enable them to lead dignified, peaceful and active lives in society.

6. The civilian Government granted amnesty and restored the rights of a total of 44,659 citizens on four different occasions, including in March 1993, when the greatest number of pardons was issued since the foundation of the Republic of Korea. The pardons freed most inmates who had been imprisoned for violating public peace and security (including espionage from the Democratic People's Republic of Korea), with the exception of those who could not be tolerated under the newly established liberal democratic system. Also, the civilian Government continues to deliberate the issue of physical detention and the prevention of torture. It is perceived that physical detention is

the most powerful legal measure in a democratic society which restricts the guarantee of personal liberty, affecting both the one who is detained and those around him. Therefore, prudent and cautious measures must be applied to cases of physical detention. Moreover, the Government has made every effort to devise legal and institutional mechanisms to further guarantee human rights, including increasing defence counsel visitation rights and expanding the scope of legal aid available to the economically underprivileged. These mechanisms are being perfected instituting severe punishment for those who violate the standards of the investigation process.

7. Furthermore, the Government endeavours to guarantee decency in all aspects of human life, including housing, education, culture, medical care, a clean environment, and the right to pursue happiness. Among the important measures that have been taken are the introduction of allowances for the unemployed, the expansion of medical insurance and national pension policies, the extension of welfare benefits to the handicapped and the elderly, and legislation for protecting the environment, etc.

8. In addition, the Republic of Korea is in the midst of achieving great economic, social and cultural reforms. It is doing its utmost to contribute to the smooth functioning of a democratic society where justice prevails. The goal is to establish a solid democracy by ensuring a system of local self-government, a substantial expansion of political rights through integrated election laws, and promoting economic fairness through a real-name business system for real estate and finances.

9. The Government of the Republic of Korea, in working out this initial report, has referred to the General Guidelines on the Form and Content of Reports of Contracting Parties which the Committee against Torture adopted at its first meeting on 20 April 1988. Part I of this report states general information, including all provisions of the Constitution and laws regarding the prevention of torture, the relationship between the Convention and domestic laws, instruments of human rights protection, measures that individuals claiming damage from acts of torture can take, the right to legal counsel, and factors that affect the prevention of torture. Part II of this report describes legislative, judicial and administrative measures which relate to the implementation of the provisions in articles 2 to 16 of the Convention.

## I. GENERAL INFORMATION

### A. Relevant provisions of the Constitution and laws concerning the prevention of torture

10. The first Constitution of the Republic of Korea was promulgated on 17 July 1948. Following several amendments, the current Constitution was promulgated on 25 February 1988. The amended Constitution was founded upon a procedure reflecting the ardent aspirations and consent of the people. It contains provisions for strengthened guarantees of the entire scope of fundamental human rights. As the superior organizing and ruling principle of the State, the Constitution has played a great role not only in political, economic and social developments, but also in improving human rights.

11. Human rights are guaranteed by the Constitution of the Republic of Korea. Article 10 of the Constitution of the Republic of Korea provides that "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." In addition, article 37, paragraph 1, provides that "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution." This stipulation indicates that all citizens of the Republic of Korea are protected from all forms of torture. Related to article 2, paragraph 2, of the Convention, article 37, paragraph 2, of the Constitution of the Republic of Korea states that "The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restrictions are imposed, no essential aspect of freedoms or rights shall be violated." Thus, the violation of fundamental human rights through torture, or any means, cannot be justified by any reason.

12. Article 12, paragraphs 2 and 7, of the Constitution of the Republic of Korea provide respectively that "No citizen shall be tortured or compelled to testify against himself in criminal cases" and that "In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit, etc., or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession." Therefore, the Constitution prohibits torture and cruel treatment or punishment, and provides that confessions obtained or resulting from torture cannot be admitted as evidence of guilt. This stipulation safeguards defendants from such violations.

13. In accordance with these articles, laws and regulatory statutes contain more detailed provisions guaranteeing constitutional rights and prohibiting torture and other cruel, inhuman and humiliating treatment and punishment.

14. In order to ensure the Constitutional provisions which prohibit torture, it is provided that any public official who commits an act of torture, cruel treatment, or inhuman punishment shall be severely punished (details are found in the comments in relation to article 4 of the Convention).

(a) A person who, in performing or assisting in activities concerning a judicial trial, prosecution, police investigation or other functions involving physical restraint, commits an act of violence or cruelty against a criminal suspect or against another person while in the performance of his duties shall be punished. In cases of unlawful arrest and confinement or death or injury resulting from those acts, the offender shall receive aggravated punishment;

(b) In cases of acts of torture committed by other public officials, the offenders shall be punished for acts of violence, intimidation, bodily injury, false arrest, illegal confinement and cruel treatment of those who are under their protection or supervision, according to the substance of their acts. Offenders shall receive aggravated punishment if the acts are committed at night by two or more persons, or if the use of deadly weapons is involved;

(c) Specifically, in cases in which acts of torture are committed by any staff member of the National Security Planning Agency, provisions subject the offenders to aggravated punishment.

15. In addition, when public officials participate in such acts of torture, the officials and their seniors are not exempt from prosecution, apart from penal punishment, or from discipline by those who are entitled to appoint them. Offenders shall bear civil liability for their acts (details are found in the comments in relation to art. 4 and art. 14 of the Convention).

16. Past experience suggests that most acts of torture in the Republic of Korea are principally committed by public officials to extract information or confessions from individuals. In this regard, provisions guaranteeing the right not to answer questions and the inadmissibility of confessions obtained through torture or other unlawful forms of coercion as evidence help to prevent such acts of cruelty as torture (details are found in the comments in relation to art. 2, para. 1, and art. 15 of the Convention).

(a) The provisions of the Constitution (art. 12, para. 2) and the Penal Procedure Code (art. 200, para. 2, and art. 289), which stipulate the right of the suspect or the accused not to answer questions, also guarantees the right of refusal to answer questions even when threatened by such compulsive measures as torture;

(b) The Constitution (art. 12, para. 7) and the Penal Procedure Code (art. 309) make clear that if the confession of a suspect or an accused defendant which was obtained in the investigative offices is suspected to have been made involuntarily by means of torture, violence, threat or unduly prolonged arrest, or if the confession has no other supportive evidence, it cannot be admitted as evidence in court. Therefore, the results of acts of torture are nullified.

17. Apart from all these provisions, other institutional devices such as cautionary provisions urging the protection of human rights by investigating officials, a public prosecutor's inspection of detention places, a process of appeal and reappeal, constitutional petitions, quasi-indictment procedures, arrest and detention warrants, and requests for the courts to examine the legality of arrest or detention may also be regarded as mechanisms to prevent acts of torture both directly and indirectly (details are found in the comments in relation to art. 2, para. 1, of the Convention).

Protection of the rights of foreigners

18. In principle, the fundamental human rights guaranteed by the Constitution of the Republic of Korea apply equally to foreigners who do not have citizenship of the Republic of Korea. In this regard, article 11, paragraph 1, of the Constitution provides that "there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." The concept of social status only means an inherent status which is determined from birth, but also designates whatever measures are used in the social evaluation of persons. Furthermore, all prohibitions of discrimination provided in the Constitution are enumerated

simply for illustrative reasons. Discrimination is never permissible merely because the cause was not delineated specifically in the Constitution as prohibited.

19. Citizenship of the Republic of Korea is required in order to be privileged to certain rights, for example, the right to vote and the right to be elected to public office. Nevertheless, most rights are equally guaranteed to all foreigners who reside or sojourn temporarily within the territory of the Republic of Korea. Thus, foreigners enjoy the same protection concerning torture as that of nationals of the Republic of Korea, as prescribed by the Constitution and relevant laws. However, in cases in which a foreigner claims damages against the Republic of Korea, the State is held liable only if a mutual guarantee exists between the home State of the foreigner and the Republic of Korea (art. 7 of the National Compensation Act).

### B. The relationship between the Convention and Korean domestic laws

20. Article 6, paragraph 1, of the Constitution of the Republic of Korea provides that "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." The Convention has the same effect as domestic laws following executive ratification and the promulgation of the Convention, with the consent of the National Assembly. Additional legislative measures are not necessary. Therefore, when conflicts between domestic laws and the Convention arise, the lex posteriori rule and the principle of the precedence of special law shall be applied.

21. The Constitution and domestic laws of the Republic of Korea do not conflict with the Convention. However, owing to the special situation between the Republic of Korea and North Korea on the Korean peninsula, article 21 (Right of States parties to send communications) and article 22 (Right of individuals to petition for injuries inflicted by torture) of the Convention were selectively deferred by the Republic of Korea when joining the Convention. Nevertheless, as the Government of the Republic of Korea has sanctioned the Optional Protocol to the International Covenant on Civil and Political Rights, allowing torture victims to send communications to the Human Rights Committee for damage and injuries. There are no barriers to demands to international organizations for redress by torture victims.

22. In addition, the Government of the Republic of Korea has acceded directly or indirectly to human rights covenants dealing with torture. Examples include the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the four Geneva Conventions of 1949 concerning the protection of victims of armed conflict, the two Additional Protocols of 1977 to the Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, etc.

23. The Republic of Korea also respects and observes United Nations declarations and standard rules such as the Universal Declaration of Human Rights, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974, the Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials, etc.

24. The Government of the Republic of Korea also supports the activities of the special rapporteurs of the United Nations Commission on Human Rights concerning issues of torture.

## C. Instruments for human rights protection

25. As mentioned above, the Convention has the same effect as the domestic laws of the Republic of Korea, without necessitating additional legislative measures. Therefore, the Convention should be observed by all State agencies, including the judiciary branch, investigative agencies, and the agencies responsible for executing punishment.

### The courts

26. The courts are the instrument for guaranteeing the fundamental rights of the people by granting them redress of rights infringed upon by State power. The fundamental rights of people are preserved by the guarantee of the right to a trial provided in the Constitution.

27. The Constitution of the Republic of Korea guarantees all individuals the right to a trial by judges qualified under the law (arts. 27 and 101 of the Constitution).

28. Judicial power is vested in the Supreme Court, which is the highest court of the State, and other courts at specified levels (art. 101, para. 2, of the Constitution). The Constitution also provides that "Judges shall rule independently according to their consciences and in conformity with the Constitution and the laws (art. 103 of the Constitution). Therefore, judges should rule independently from various social interest groups and be unswayed by public opinion, not to mention the executive and legislative government branches.

29. Qualifications for judges are determined by law in order to prevent abuse of judicial power by the executive (art. 101, para. 3, of the Constitution). The Chief Justice of the Supreme Court is appointed by the President with the consent of the National Assembly; the Supreme Court Judges are appointed by the President on the recommendations of the Chief Justice and with the consent of the National Assembly; and other judges are appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices. Therefore, the independent administration of judicial affairs is assured (art. 104 of the Constitution). No judge shall be removed from office except by impeachment or a sentence of imprisonment or a more severe punishment (art. 106, para. 1, of the Constitution).

30. In cases in which fundamental rights are infringed upon by torture, etc. the courts may sentence violators/offenders as prescribed by law. Courts further contribute to guaranteeing fundamental rights of the people by awarding appropriate compensation to the victims against State agencies which committed torture, both preventing illegal acts such as torture and providing redress to the victims.

The Constitutional Court

31. The Constitutional Court is the instrument for adjudicating petitions relating to the Constitution. Such adjudication guarantees fundamental rights. Any person whose fundamental rights were infringed upon due to the exercise or non-exercise of public power may request redress from the Constitutional Court. In addition, the Constitutional Court plays an effective role as the organ for guaranteeing fundamental rights by making an adjudgement on whether any law involving the infringement of fundamental rights is unconstitutional. The Constitutional Court takes charge of the following matters: (a) adjudgement on whether or not any law is unconstitutional upon the proposition of the Court; (b) adjudgement on an impeachment; (c) adjudgement on the dissolution of a political party; (d) adjudgement on competence disputes between State organs, between a State organ and a local government, and between local governments; and (e) adjudgement on constitutional petitions as prescribed by law.

32. The Constitutional Court is composed of nine adjudicators qualified to be court judges. They are appointed by the President, three from persons selected by the National Assembly and three from persons nominated by the Chief Justice (art. 111, paras. 2 and 3, of the Constitution). No adjudicator of the Constitutional Court shall be expelled from office except by impeachment or a sentence of imprisonment or heavier punishment (art. 112, para. 3, of the Constitution). This provision safeguards the adjudicators' ability to decide according to their consciences in conformity with the Constitution as its guarantors.

Courts martial

33. In consideration of the special nature of the military in the Republic of Korea, article 27, paragraph 2, of the Constitution provides that courts martial may be established as special courts, distinct from the standard judicial system, and that their organization, authority, and the qualifications of their judges shall be determined by law. The Court Martial Act confers upon courts martial the jurisdiction over persons in active military service, or employees of the military forces who have special status, and over nationals and foreign aliens who violate some provision of military penal law within the territory of the Republic of Korea, including crimes involving important classified military information and prisoners of war (art. 2 of the Court Martial Act). Courts martial also have jurisdiction, in principle, over those who commit acts of torture while on active military service or employed by military forces, regardless of whether the crime is committed within or outside the territory of the Republic of Korea.

34. Courts martial are established within the military and have jurisdiction over crimes concerning military matters. Thus, they have special status in

terms of establishment and jurisdiction. However, their administration is similar to that of general courts, thereby guaranteeing fairness and justice.

(a) In cases in which courts martial have handed down judgements, defendants may appeal to the Supreme Courts, the highest court in the nation. They may also request the Constitutional Court for redress of their rights through constitutional petitions regarding the exercise of public power by a military prosecutor;

(b) Military judges and prosecutors are appointed from among military legal officers who have the same qualifications as judges of the general courts and whose statuses are guaranteed;

(c) The Court Martial Act and other acts have almost the same provisions as the Penal Procedure Code, from investigation and trial to pronouncement of a sentence. Thus the procedural code is not much different from that of a general penal one (in cases in which the Court Martial Act provides the same stipulations as the Penal Procedure Code when referring to institutions of the Republic of Korea in relation to each article of the Convention, statements regarding the Court Martial Act are omitted).

Other instruments for human rights protection

35. The Republic of Korea prevents acts of cruelty, including torture, by imposing responsibilities concerning the guarantee of human rights on public prosecutors who take charge of the investigation and prosecution of crimes.

(a) The Human Rights Division, which is a part of the Ministry of Justice of the Republic of Korea, deals solely with human rights affairs and is composed of three public prosecutors and an assistant. The Division oversees human rights protection, legal aid and observance of the spirit of law and order. The Human Rights Division is particularly concerned with the following: laying out and implementing a master plan regarding the defence of human rights; conducting research on laws and institutions in relation to human rights; cooperating with other ministries regarding the defence of human rights; campaigning for human rights issues; reviewing proposals to accede to international conventions concerning human rights and legal questions involved in implementing the conventions domestically;

(b) As a measure to protect and improve the fundamental rights of individuals, consultation offices for human rights are established in each district public prosecutor's office and branch office throughout the nation. Furthermore, public prosecutors in charge of human rights affairs are appointed to collect information on cases involving human rights violations, and to place criminal cases or petitions involving the infringement of human rights under special administration.

36. Responsibilities are also imposed on the judicial police officers who take charge of investigations, to prevent them from infringing human rights. Beginning in 1982, police stations received complaints regarding partial or improper investigation or acts of cruelty, reinvestigating and correcting them. From May 1993, report centres for human rights violations, such as acts

of violence or acts of cruelty committed during investigations, have been established in inspection rooms of the National Police Office, District Police Offices and the Marine Police Office, and in offices of police superintendents. Moreover, beginning in January 1992, heads of investigation divisions in the National Police Office and District Police Offices throughout the nation have been appointed as human rights protectors, educating investigators on human rights protection during investigations and conducting inspections of sites which are vulnerable to human rights violations, such as detention centres, and promoting measures for human rights protection. From December 1994, police superintendents have conducted interviews with suspects in police detention centres prior to being committed to jail, hearing their complaints personally to ensure that no doubt exists concerning partial investigations or acts of cruelty.

### D. Measures which can be taken by individuals alleging injury from torture

37. According to the Constitution and relevant laws, various measures of redress are available to individuals who allege violation of their human rights such as injuries inflicted by torture. This report deals with general measures of remedy having to do directly or indirectly with torture, which is one form of infringement upon fundamental human rights.

38. Petition. In general, individuals who allege violation of their fundamental human rights through acts of torture committed by government officials/agencies may seek redress by means of petition according to article 26 of the Constitution. The result is reparation for damages and disciplinary action or punishment of the public officials involved. Detailed procedures can be found in article 6 through article 8.

39. Quasi-appeal. Those protesting against confinement or seizure by a prosecutor or a judicial police official, or demanding restoration of seized articles, may request revocation or change (art. 417 of the Penal Procedure Code). Accordingly, in cases in which detention becomes a form of torture, or acts committed in association with that detention constitute torture or other atrocious, inhumane or humiliating treatment, the injured parties may request its revocation or change to the court.

40. Redress for damages incurred by the infringement of rights. Those who are injured by wrongful acts committed during the performance of official duties have the right to claim damages, according to the National Compensation Act and Civil Code (art. 29, para. 1, of the Constitution). Furthermore, in cases in which a public prosecutor does not seek indictment of a criminal suspect arrested or detained, or if the Court acquits the accused, the suspect or the accused has the right to claim penal compensation against the Government according to the Penal Compensation Act (art. 28 of the Constitution).

41. Request for aid by victims of criminal acts. The Constitution of the Republic of Korea provides for the rights of victims of criminal acts to claim aid from the Government. Article 30 of the Constitution provides that "Citizens who have suffered bodily injury or death due to criminal or other

acts may receive aid from the State as prescribed by law." The Aid to the Criminal Victims Act, which entered into force from 1 July 1988, provides detailed methods and procedures of receiving government aid.

42. Complaint and accusation. When fundamental rights are infringed upon by public officials' acts of torture, the victim has the right to request the public prosecutor's office or the police to rectify the wrongful act. The individual may also demand an investigation or prosecution procedure by means of complaint or accusation regarding wrongful detention or torture. To support those complaints or accusations institutionally, the laws of the Republic of Korea provide the procedure of applying for a ruling (arts. 260-265 of the Penal Procedure Code; arts. 301-306 of the Martial Court Act), and procedures of appeal or reappeal to a higher public prosecutor's office.

43. Furthermore, victims may lodge complaints and accusations based on the provisions of the Criminal Execution Act, the Juvenile Agency Act, and the Military Criminal Execution Act.

44. Detailed explanations of methods and procedures of redress will be provided in each statement concerning the provisions of the Convention.

## E. The rights to counsel

45. Although the rights of victims of torture are guaranteed under domestic and international law, it is difficult for those who do not have knowledge of law to claim for damages/redress without the assistance of counsel. The Penal Procedure Code guarantees the right to counsel for the suspect or the accused in order to protect against atrocities such as torture (art. 29 and art. 30 of the Penal Procedure Code). Without notification of the right to counsel, the suspect or the accused cannot be arrested or detained (arts. 209, 72, 88, 200-5 of the Penal Procedure Code), and the right to interview and communicate with counsel is provided in the Code (art. 34). Moreover, in cases in which the suspect is a minor, elderly (over 70), deaf, mute and mentally or physically handicapped, destitute, etc. the court may elect the counsel ex officio (art. 33 of the Code).

46. The Government of the Republic of Korea is implementing a Judicial Aid Programme which provides free legal consultation, assistance with court costs, and free procuration for those who do not have knowledge of law or cannot afford counsel. Korea Legal Aid Corporation (hereafter KLAC), established on 1 September 1987, is operated with the financial support of the State. Currently, KLAC had 51 offices providing legal aid for farmers and fishermen, labourers whose monthly earnings are under 1 million won (equivalent to US$ 1,250), and small-scale businessmen. The record of achievements for the past three years is as follows:

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|---|---|
| legal consultations: | 303,234 cases 1992; 342,049 in 1993; 344,364 in 1994, |
| aid in lawsuits: | 28,321 cases in 1992; 34,625 in 1993; 37,729 in 1994. |

47. The number of those passing the bar examination in the Republic of Korea has increased to 300 per year since 1981. Some are appointed as judges or public prosecutors, and others become lawyers. As of July 1995, despite the fact that the country's population stands at 46 million, the total number of lawyers is approximately 3,700, indicating a grave shortage of lawyers, considering the economic and social development of the Republic of Korea. As a result, citizens do not have easy access to lawyers. This means that there is a limit on the extent to which individuals may exercise their rights guaranteed by law. Also, despite its achievements, KLAC also has its own limits. It did not extend its services to farming and fishing areas, barely able to provide aid in criminal cases. The KLAC could not expand its legal aid objectives because the fees of the lawyers who belonged to KLAC were relatively low and the working conditions were poor (in the Republic of Korea, as mentioned before, the number of lawyers is limited, and most of them work in big cities where fees are relatively high).

48. However, in 1995, two revolutionary measures were adopted to expand the right to counsel. One was to increase the number of those who passed the bar exam from 300 to 500. The other was to adopt the Public Judge Advocate System.

Public Legal Officer System

49. Given the special circumstances of confrontation between the North and South, nationals of the Republic of Korea are required to carry out military obligations. The Public Legal Officer System allows those who completed the Judicial Academy (the status of lawyer is conferred upon those completing the two-year Judicial Academy training courses after passing the bar exam), but have not yet been elected as judge advocates due to incomplete military obligations, to be appointed as public legal officers to engage in legal aid, with the exception of those who are appointed as military legal officers. The Public Legal Officer System allows qualifiers who have not yet completed their military service to become lawyers engaged in community service in place of carrying out their military obligations. Even countries that do not prescribe such legally required military obligations may adopt this system, because it may be said that the services of the legal profession for society will be required for some time, regardless of the social status and public perception of lawyers; the stronger the rule of law becomes, the higher the social status of and esteem for members of the legal profession.

50. Serving as a public legal officer is a form of military service. To guarantee successful service, public legal officers are given the status of officials. They belong to the Ministry of Justice, and the Minister appoints and supervises them collectively. The duties of public legal officers are mainly to provide legal aid, to serve as defence counsel appointed by the Government and agencies of the Government in public and administrative suits. An idea is being considered to have them engage in law-related fields at the local government level if their number increases. Public legal officers serve at legal aid corporations or public prosecutors' offices. To ensure expert legal services in farming and fishing regions, they are appointed to courts and public prosecutors' offices where there are no lawyers at all or no lawyers providing legal aid.

51. The introduction of the Public Legal Officer System made it possible to provide expert legal services for farmers and fishermen. It provided actual legal aid, solving the problem of legal advice being given by non-legal professionals. The scope of legal aid was also expanded to penal procedural aid and the legal aid objectives were expanded. The Republic of Korea has been criticized for defence counsel appointed by the Government being non-committal due to the low fees. The public Legal Officer System overcame this problem with the obligatory engagement of legal specialists in lieu of military obligations. As a result, suspects and the accused may interview and communicate with legal experts easily, thus safeguarding them from injury by torture, and allowing torture victims easier access to civil and penal procedures.

## F. Investigating agencies and correctional facilities

52. Institutionally and historically, the typical agencies in which torture or other cruel, inhuman or humiliating treatment or punishment can be committed are investigating agencies and correctional facilities. Therefore, before discussing the measures concerning the implementation of the Convention and improvements, general references have been made to the investigating agencies and the correctional facilities.

### The public prosecutor

53. The public prosecutor is the agent who contributes to the implementation of criminal justice, being involved in every step of the criminal procedure, from the investigation of crimes to the execution of judgements. In other words, the public prosecutor is the one who presides over investigations, directs and supervises judicial police officials, and independently determines whether or not to institute a public prosecution after completing the investigation. In addition, he has broad authority, on the one hand as a party against the accused in public trials requesting the court for due application of laws and regulations, and on the other hand as director over the execution of criminal judgements when the judgement has become final.

54. As mentioned above, while the office of the public prosecutor is an instrument of the executive branch of government, in fact it is a quasi-judicial organ which is closely related to the judicial power and is under the obligation to act only for truth and justice. The requisite qualifications to be appointed as public prosecutor are the same as those for a judge (art. 29 of the Public Prosecutor's Office Act) and his/her status is guaranteed (art. 37 of the above Act); that is, he shall not be subject to dismissal, suspension of office or reduction of salary unless he is impeached or sentenced to imprisonment without hard labour or more severe punishment, or if he is subject to disciplinary measures.

55. In the Republic of Korea, the public prosecutor is the one who presides over investigations and the judicial police officials are his auxiliary agents (arts. 195 and 196 of the Penal Procedure Code; art. 4, para. 2, of the Public Prosecutor's Office Act). By granting the right to direct investigations to the public prosecutor, who has the same qualifications as a judge and whose

status is guaranteed, fairness can be assured and investigations of illegal activities may detect unlawful acts such as torture more easily, thus enhancing guarantees of human rights during investigations.

(a) The public prosecutor directs the judicial police officials during investigations, both general and specific, and they shall obey any official order issued by the competent public prosecutor in the criminal investigation (art. 53 of the Public Prosecutor's Office Act). Provisions (b) through (d) institutionally ensure the rights of the public prosecutor to direct judicial police officials;

(b) Issuance of detention or arrest warrants and search and seizure warrants can only be requested by the public prosecutor. In other words, either the public prosecutor personally requests a warrant, or the public prosecutor requests a warrant on behalf of the judicial police officers and, if granted, the warrants are issued by the competent court judge (art. 200-2, para. 1; art. 201, para. 1; art. 215 of the Penal Procedure Code). In addition, only the public prosecutor has the right to terminate an investigation, and he may also order the police officers to immediately transfer cases to the public prosecutor's office (art. 198-2, para. 2 of the Code);

(c) If a judicial police officer commits any unjust act in the performance of his duties, the chief public prosecutor of the district public prosecutor's office may order him to suspend the investigation of the case concerned and request the person having the competence to appoint a replacement. The person having the competence to appoint shall comply with the request for a replacement unless he presents any justifiable reason not to (art. 54 of the Public Prosecutor's Office Act);

(d) There is a difference of probative value between the protocol prepared by the public prosecutor and that prepared by the judicial police officers (art. 312 of the Penal Procedure Code), and a judicial police official shall notify the chief public prosecutor of the district public prosecutor's office or the branch office regarding investigations outside his jurisdiction (art. 210 of the Code). There are also some special provisions, stipulating the inspection of detention places by the public prosecutor (art. 198-2 of the Code); the right of permission concerning urgent arrests (art. 200-3, para. 2, of the Code); the obligation of a judicial police official to notify the chief public prosecutor of the district public prosecutor's office or of the branch office regarding the investigation (art. 11 of the Rules concerning the Performance of the Judicial Police Officials); and the obligation to relay relevant information (art. 12 of the Rules).

Judicial police officials

56. Judicial police officials consist of general judicial police officials and special judicial police officials.

(a) General judicial police officials include judicial police officers and judicial police assistants. Investigators, police administrative officials, police superintendents, police captains and police lieutenants

shall investigate crimes as judicial police officers under the authority of a public prosecutor (art. 196, para. 1, of the Penal Procedure Code; art. 46, para. 2, of the Public Prosecutor's Office Act; addendum, art. 6 of the Police Service Act). Police sergeants and patrolmen shall assist in the investigation of crimes as judicial police assistants under the authority of a public prosecutor or a judicial police officer (art. 196, para. 2, of the Penal Procedure Code). Also other judicial police officers may be appointed in accordance with the law (para. 3 of the same article);

(b) Judicial police officials who take charge of investigations in special areas are called special judicial police officials. These special officials shall perform the duties of judicial police officials regarding forestry, maritime affairs, monopoly, taxation and other special circumstances. The extent of the duties shall be prescribed by law (art. 197 of the Act Concerning Persons Who Perform the Duties of Judicial Police Officials and the Extent of Their Duties). Special judicial police officials are characterized by the fact that the extent of their authority is restricted in terms of the regions and subject matter of their duties, even though they possess the same authority and status as general judicial police officials;

(c) Some staff members of the National Security Planning Agency, appointed by the director of the Agency, may perform the duties of judicial or military judicial police officials in the following circumstances (art. 16 of the National Security Planning Agency Act):

(i) Crimes concerning insurrection and foreign aggression as delineated in the Criminal Code, and crimes concerning mutiny and illegal use of military codes as defined by the Military Criminal Code;

(ii) Crimes delineated in the Military Secret Protection Act and in the National Security Act (excluding crimes defined in arts. 7 and 10 of the Act);

(iii) Other crimes concerned with the duties of the staff of the National Security Planning Agency.

Correctional facilities

57. Correctional facilities refer to State facilities in which punishment by deprivation of freedom, such as penal servitude, imprisonment, or detention, are carried out, as well as facilities in which criminal suspects, the accused, and persons sentenced to death are held. In the Republic of Korea, the head of the correctional facilities is the Minister of Justice, and he has been appointed from among those employed in the office of the public prosecutor or the judiciary. The current minister of Justice has served as a Supreme Court Justice. In addition, the Office of the head of the Correction Bureau, the highest office responsible for the practical affairs of correctional facilities, is held by a public prosecutor. Such a structure reflects the will of the Government of the Republic of Korea to prevent human rights violations such as torture in correctional facilities and to respecting human rights. Moreover, as will be mentioned later, patrol examinations by

the Minister of Justice or inspection tours by a public prosecutor contribute to improving the actual conditions of the criminal suspects and legitimacy regarding execution of punishment.

58. The Institute for Examining the Classification of Juvenile Criminals is entrusted with classifying juvenile criminals between the ages of 12 and 14 who do not comply with the legitimate supervision of their guardian. The Institute conducts the examinations necessary to decide on protective measures, based on the specialized knowledge of psychiatry, psychology, pedagogy, sociology, etc., and it notifies the court of the results. The term of trust shall not be longer than one month, and may be extended only once by court decision if considered necessary. If results of the examinations demonstrate that protective measures are necessary for some juveniles, a judge for the Juvenile Department may transfer the youths to a juvenile reformatory for a short term, according to article 32, paragraph 1, subparagraph 6, of the Juvenile Act, or transfer them to a juvenile reformatory without mentioning a length of term. If the transfer is for a short term, it shall not be longer than six months, but it may be extended once within that six-month period (arts. 32 and 33 of the Juvenile Reformatory Act). Even in these cases, as will be mentioned later, the director of a juvenile reformatory or the director of the Institute for Examining the Classification of Juvenile Criminals may conduct interviews with juveniles under protection at any time, to hear about their treatment or their personal affairs, ensuring the observance of due process (art. 10 of the Juvenile Reformatory Act).

59. Protective custody facilities are established and run by the Protection of Society Act. Custody facilities hold criminals who have the potential to repeat their offence and criminals for whom special education rehabilitation and treatment are deemed necessary, assisting their reintegration and protecting society. Regarding protective custody, the Penal Procedure Code and the Criminal Execution Act are applicable unless prescribed otherwise, ensuring the protection of those who are under protective custody (art. 42 of the Protection of Society Act).

Military investigating agencies, etc.

60. As for the cases mentioned in paragraph 33 above concerning military public prosecutors and military police officers who engage in the criminal investigations, most of the procedures are similar to penal ones. Furthermore, the military prison is a facility which, unlike the general prison, holds military convicts and unconvicted prisoners. It is regulated by the Military Criminal Execution Act and the Military Prison Ordinance. However, most provisions are the same as those of the Criminal Execution Act.

## G. Other significant circumstances to be considered

61. To have a correct understanding of all the relevant measures for preventing torture in the Republic of Korea, there should exist, above all, an objective perception of the changes in economic and social conditions. This is especially true regarding the educational level of the people and the confrontational circumstances between the North and South.

Population, economic structure and educational level

62. Changes in the population, the economic structure, and the improvement of the educational level throughout this country have brought new meaning to the concept of human rights. As the people have been enlightened to new aspects of human rights, they have come to protest actively against unjust treatment by the State including torture.

63. The population of the Republic of Korea was 44,450,000 as of the end of 1994, and the population density is 447.3 persons per square kilometre. As in other developing countries, the rapid increase in population was once considered a serious social problem, but the rate of increase in population dropped significantly as a result of successful family planning movements and the people's increased awareness of the population issue. For example, the rate of population increase in 1994 was 0.9 per cent. Furthermore, one of the most outstanding features in the demographic structure is the continuous increase in the number of young people with high education levels, as demonstrated by the 1994 census which showed that the proportion of people under 25 years of age was 42.8 per cent of the whole population. The working age population, signifying persons over 15 years of age, has increased from 20.9 million in 1975 to 33.2 million in 1994.

64. The economic structure has under gone great transformation resulting from more than 30 years of economic growth. In 1966, the year in which the first five-year economic development plan ended, the first industry was credited with earning 34.8 per cent of GNP, the second industry 20.5 per cent and the third industry 44.7 per cent. However, by 1994, the proportions of each industry had changed to 7.3 per cent, 42.7 per cent, and 50.0 per cent, respectively. Presently, the Republic of Korea is a fast-industrializing country and upper-middle-level incomes. In addition, GNP in 1962 was 2.3 billion dollars and GNP per capita was 87 dollars. By 1994 GNP had increased to 376.9 billion dollars and the GNP per capita to 8,483 dollars. Therefore, the Republic of Korea is considered to have recorded one of the highest rates of economic growth during the last quarter century. Such economic growth is promoted by the fact that the Republic of Korea adopted an export-oriented industrial strategy based on a large and well-educated labour force. The Republic of Korea is one of the top 10 steel-exporting countries in the world. Other major industries in the Republic of Korea are the semiconductor, electronics, shipbuilding, automobile and chemical industries.

65. Primary education has become compulsory since the enactment of the Education Law in 1949. Since 1970, virtually the entire population has received primary education and 99 per cent of them have entered middle schools; 98 per cent of middle school graduates enter high schools and 51.4 per cent of high school graduates enter universities. In the Republic of Korea, virtually everyone is literate, except for some in the elderly population (under Japanese colonial rule before 1945, the right of education was restricted to a few) and those with mental handicaps. In addition, as most people have received or are receiving secondary or higher

education, the consciousness of the Korean people about rights and their demands for redress against the infringement of their rights are second to none in the world.

Security on the Korean peninsula

66. Although the cold war has come to an end and a new era of détente has begun, security of the Korean peninsula remains unstable.

67. Recognizing that the Democratic People's Republic of Korea is a member of the national community and a partner in reunification efforts towards bringing peace to the Korean peninsula through dialogue and cooperation, the Government of the Republic of Korea has continually made efforts to hold talks with the Democratic People's Republic of Korea, even under circumstances of military confrontation. For example, the Government of the Republic of Korea has sent substantial amounts of rice to the Democratic People's Republic of Korea as humanitarian aid. It also returned Mr. In-mo Lee, a long-term communist convict, to the Democratic People's Republic of Korea in the spirit of détente. However, the Democratic People's Republic of Korea which provoked the tragic Korean War, has not given up its desire to conquer the Republic of Korea by force. In 1968, it sent armed espionage agents to the Republic of Korea on a mission to attack the Blue House, which is the presidential residence. In the 1983 bombing in Yangon, Myanmar, it killed leading figures of the Government of the Republic of Korea visiting the country. Moreover, in 1987 it blew up a KAL airplane, killing 155 civilians on board. Apart from these acts of terrorism, the Democratic People's Republic has relentlessly made efforts to overthrow the Government of the Republic of Korea by organizing espionage groups, and has been attempting to instigate the insurrection of the people against the Government through official broadcasts.

68. The division of the Korean peninsula between North and South is an undeniable fact which may serve to restrict the exercise of fundamental rights in the Republic of Korea, but it cannot justify the violation of essential aspects of the rights of the people. Therefore, acts which violate essential aspects of fundamental rights such as torture are not permissible in the Republic of Korea under any circumstances. Moreover, the civilian Government is making efforts to guarantee and improve the rights and freedoms of the people, despite the present conditions and security concerns on the Korean peninsula. Nevertheless, owing to the division of the Korean peninsula there have been distortions of the truth that have ignored objective appraisals of the human rights conditions in the Republic of Korea.

## II. INFORMATION IN RELATION TO ARTICLES IN PART I OF THE CONVENTION

### Article 2

Paragraph 1

69. The ideals of the Universal Declaration of Human Rights and the Convention against Torture prevention are realized in the legal system of the Republic of Korea through provisions prohibiting torture and cruel and inhuman treatment or punishment.

70. Direct and indirect provisions of legislative, executive and judicial measures for torture prevention are included in the Constitution of the Republic of Korea, such as:

(a) We the people of Korea, proud of a resplendent history and tradition ... pledge to ensure security, liberty, and happiness for ourselves and for future generations forever ... (preamble to the Constitution);

(b) All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals (art. 10 of the Constitution);

(c) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, or interrogated in an unlawful manner. No person shall be punished, places under preventive restrictions or subject to involuntary labour except as provided by law and through lawful procedures (art. 12, para. 1, of the Constitution);

(d) No citizen shall be tortured or be compelled to testify against himself in criminal cases (art. 12, para. 2, of the Constitution);

(e) In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit, etc. or in a case where a confession is the only evidence against a defendant in a formal trial, such confessions shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such confessions (art. 12, para. 7, of the Constitution);

(f) Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution (art. 37, para. 1, of the Constitution);

(g) The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restrictions are imposed, no essential aspect of the freedoms or rights shall be violated (art. 37, para. 2, of the Constitution).

71. In addition, the Constitution provides for the issuance of warrants (art. 12, para. 3); the right to prompt assistance of counsel (art. 12, para. 4); notification of detention and appointment of defence counsel (art 12, para. 5); examination of the legality of confinement (art. 12, para. 6); the presumption of innocence (art. 27, para 4); the right to demand compensation for unfair detention (art. 28); and the right to make claims for damages to the State (art. 29), in order to prevent unfair detention and torture during legal confinement.

72. In accordance with such constitutional provisions, laws and regulatory statutes further delineate principles and methods of preventing torture.

Caution to those who engage in investigations

73. The Penal Procedure Code orders those who engage in investigations to respect the human rights of a suspect or other persons, prohibiting illegal acts such as torture. That is to say, a public prosecutor, judicial police officials or others involved in an investigation shall maintain secrecy in order not to violate the personal rights of a suspect or other persons, and shall not infringe the rights of others in the course of an investigation (art. 198 of the Penal Procedure Code).

74. There have been assertions of human rights violations committed by staff members of the National Security Planning Agency while investigating communist elements. Such allegations have led to the creation of a new provision to prohibit the abuse of authority. These new provisions are an expression of the will of the Government to prevent torture and other violations of human rights by the staff of the National Security Planning Agency. That is to say, the revision of the law completed on 5 January 1994 prohibits staff members of the National Security Planning Agency from arresting or detaining a person, compelling a person to do something that is not required of him, or obstructing a person from exercising his rights. In case a member of the National Security Planning Agency violates these obligations, he shall be subjected to punishment heavier than for other public officials who violate human rights while conducting investigations (arts. 11 and 19 of the National Security Planning Agency Act).

Principles of the presumption of innocence and the right to refuse to answer questions

75. In accordance with the provisions of the Constitution, article 275-2 of the Penal Procedure Code provides that the accused shall be presumed innocent until he is adjudged to be guilty, thereby prohibiting unfavourable treatment such as physical detention and torture.

76. The right to refuse to answer questions derives from the privilege against self-incrimination in common law, and it designates the right of a suspect or the accused not to answer the questions of the court or investigative agencies in public trials or investigations. The right to refuse to answer questions is a humane safeguard against confessions compelled by torture.

77. On the basis of article 12, paragraph 2, of the Constitution, which provides that "No citizen shall be tortured or be compelled to testify against himself in criminal cases", the Penal Procedure Code provides for the right of the accused or a suspect to refuse to answer questions.

(a) In cases which require an investigation, a public prosecutor or a judicial police officer may request the suspect to appear for interrogation. The suspect must be notified in advance that he may refuse to answer questions, and an accused may refuse to answer inquiries by the public prosecutor or judicial police officer (art. 200, para. 2, and art. 289 of the Penal Procedure Code);

(b) The protocol of the interrogation of a suspect shall be shown to him for inspection or read to him. In case the suspect demands an amendment, deletion or change, the statement of the change shall be recorded therein (art. 224, para. 2, or the Code);

(c) Not informing a suspect of the right to refuse to answer questions is a serious violation of interrogation procedure and in some cases the probative value of the confession obtained by interrogation of the suspect may be nullified (Supreme Court judgement 923 DO 682, rendered on 23 June 1992);

(d) In interrogating the accused, a public prosecutor shall not compel him to testify, induce his answers, or interrogate him coercively or insultingly (art. 128 of the Penal Procedure Rule).

78. Concerning article 15 of the Convention, compelled confessions constitute an infringement of the right not to answer questions. The probative value of such confessions is therefore negated.

Issuance of warrants, interrogation of suspects, and the examination of the legality of arrest and confinement

79. Powers of arrest or detention which restrict an individual's personal liberty may be abused and constitute a form of torture. Because of the gravity of the issue of detention, the Penal Procedure Code strictly limits the conditions for detention and mandates the issuance of a warrant for detention by a competent court judge in order to prohibit abuse of detention and secure human rights under judicial control (arts. 73, 200-2 and 201 of the Penal Procedure Code).

80. In an urgent case or one involving a flagrant offender, arrests may be made without a warrant, but the requirements are strictly stipulated. When a prosecutor needs to detain such an offender, he must apply for a detention warrant within 48 hours of the arrest, otherwise he must release the offender immediately according to the above Code (arts. 200-4 and 213-2 of the Penal Procedure Code). This provision is intended to keep the prosecutor from taking advantage of the arrest to extract information or a confession from the suspect.

81. Urgent arrest is limited to cases in which there is valid reason to suspect that the crimes committed are punishable by penalty, penal servitude, life imprisonment, or imprisonment for three years or more; in which there is fear of the destruction of evidence or attempts to escape; and cases in which it is impossible to obtain a warrant from a judge of the competent district court because of urgencies. However, the prosecutor's immediate approval is required even in these cases (art. 200, para. 3, of the Penal Procedure Code). An individual who is caught in the act of committing an offence or having just committed an offence; who is being pursued by law enforcement officers; who is carrying stolen goods or a weapon or other objects recognized as being used in connection with a crime; who has apparent evidence on his body or clothes; or one who attempts to flee when questioned, is regarded as a flagrant offender, and he may be arrested without a warrant (art. 211 of the Code).

82. In accordance with the Constitution of the Republic of Korea, the Penal Procedure Code provides for the examination of the legality of confinement, originating from the writ of habeas corpus in common law. When a suspect, his defence counsel, lineal relative, etc. submits a petition to an appropriate court, the court shall hold an open trial to examine the legality of the confinement and the necessity of continued detention. If the court finds that the confinement is illegal or unreasonable, the suspect's release shall be ordered by the court's authority (art. 214-2 of the Code). That is, if the detention is imposed as a form of torture, the court may revoke the detention upon examination of the legality of the confinement. Even if the detention is legally legitimate, unreasonable acts such as torture committed during confinement may be revealed through the court's enquiries. Thus examination of the legality of confinement has great significance in this regard.

83. The Penal Procedure Code was amended in December 1995, allowing court judges to personally interrogate the suspect concerning the issuance of a detention warrant (enforced as of January 1997), and for exercising caution and prudence in cases of physical detention and prevention of illegal acts such as torture by investigative agencies (art. 201-2 of the Code).

(a) The judge of a competent district court who receives a request for a detention warrant for an arrested suspect, in accordance with the law, may question the suspect if he deems it necessary to examine the reasons for the detention (para. 1 of the same article);

(b) The judge of a competent district court who receives a request for a detention warrant for a suspect not yet arrested shall issue a detention warrant for arrest if there are reasonable grounds of suspicion that the suspect committed the crimes, and if the judge deems it necessary to examine the reasons for the detention. After the suspect has been arrested and questioned, if there are valid reasons to detain him, the judge shall issue a warrant of detention for confinement (paras. 2 and 6 of the same article).

Inspection of detention centres

84. In the Republic of Korea, a public prosecutor, who has the same qualifications as a judge and whose status is guaranteed, takes charge of investigations, thereby ensuring fairness in the investigative process and the strengthening of human rights protection during investigations.

85. To prevent the infringement of human rights by such acts as physical detention and torture committed by investigative agencies, current laws order public and military prosecutors to regularly inspect detention places in police stations.

(a) The chief public prosecutor of the district public prosecutor's office or the chief of the branch office shall detail a public prosecutor, under the authority of said offices, to inspect places where suspects are detained in police bureaux or police stations at least once every month, in order to investigate whether or not there have been cases of illegal detention. The inspecting public prosecutor shall examine and question the detainee and shall examine documents relating to the detention (art. 198-2, para. 1, of the Penal Procedure Code);

(b) If given valid reason to suspect that a prisoner has been detained through unlawful procedures, the public prosecutor shall order the prisoner's release or the immediate transfer of his case to the public prosecutor's office (art. 198-2, para. 2, of the Code). This is a provision to guarantee the effectiveness of a public prosecutor's inspection of detention places;

(c) Furthermore, public prosecutors shall direct and supervise judicial police officers and those who take charge of investigations to ensure their observance of the due process of law, in an effort to eradicate at all costs any act of cruelty during an investigation;

(d) Military prosecutors shall also inspect the detention places of military investigative agencies at least once every month, with a view towards eliminating illegal acts such as torture (art. 230 of the Court Martial Act).

86. On the other hand, both public and military prosecutors and judges may inspect prisons to ensure that the human rights of inmates are also guaranteed.

(a) The Criminal Execution Act: The Minister of Justice may perform a patrol examination of prisons, the Juvenile Reformatory and detention places, or order other officials in the Ministry of Justice to do so. Judges and public prosecutors may inspect prisons, the Juvenile Reformatory or detention places at any time (art. 5 of the Criminal Execution Act);

(b) The Juvenile Reformatory Act: The head of the Juvenile Reformatory may conduct interviews at any time with juveniles under protection to hear about their treatment or their personal affairs (art. 10 of the Juvenile Reformatory Act);

(c) The Military Criminal Execution Act: The General Chiefs of Staff in each Force may perform a patrol examination of prisons, or order other officials in the military to do so. Military judges and prosecutors in each Force may make inspection tours of prisons at any time (art. 3 of the Military Criminal Execution Act).

87. Furthermore, the Criminal Code prescribes that police officers must cooperate with public prosecutors in executing their duties of protecting human rights, and abide by the instructions of public prosecutors given in that regard, subjecting them to punishment in cases of violation. That is, a person who, while performing or assisting in police duties, interferes with the execution of the duties of a prosecutor concerning the safeguarding of human rights, or a person who does not follow the prosecutor's instructions concerning the vindication of human rights shall be punished by penal servitude not exceeding 5 years, or by suspension of qualifications for a period of time not exceeding 10 years (art. 139 of the Criminal Code).

Quasi-indictment, appeal and reappeal, and constitutional petitions

88. To ensure more severe punishment of those who commit torture, the Penal Procedure Code grants victims of torture the right to lodge complaints.

Moreover, the Penal Procedure Code provides for quasi-indictment procedures by request for a ruling, apart from indictment procedures initiated by a public prosecutor (arts. 260-265 of the Penal Procedure Code).

(a) In the Republic of Korea, the right of appeal is attributed to a public prosecutor, to ensure appropriate institution of the appeals process. In addition, to safeguard against possibilities that the exercise of prosecutorial power may be arbitrary or expedient, or affected by politics, quasi-indictment procedures are provided in relation to principal crimes;

(b) When a person lodges complaints or accusations of abuse by the authorities, including unlawful arrest and confinement, or of acts of violence or cruelty committed by investigating officials in the performance of duties (crimes such as those referred to in arts. 123-125 of the Criminal Code), and is notified of a public prosecutor's decision not to institute public prosecution, he/she may appeal to the competent High Court, according to the quasi-indictment procedures in trials, as delineated in arts. 260, 261, 262, 262-2, 263, 264, and 265 of the Penal Procedure Code;

(c) When the High Court rules that the case ought to be referred to the competent district court, public prosecution shall be deemed to have been instituted in the case, and a court-appointed advocate shall maintain the appeals process as a special prosecutor.

89. On the other hand, when a person who lodges complaints or accusations is dissatisfied with a military prosecutor's decision not to institute prosecution, he/she may appeal to the High Court Martial. Furthermore, contrary to the Penal Procedure Code, there are no provisions in the Court Martial Act restricting the scope of the crimes fit for application. Therefore, criminal punishment of those who commit acts of cruelty such as torture is more effectively guaranteed in the military (arts. 301-306 of the Court Martial Act).

90. A person who lodges complaints or accusations may appeal to the chief public prosecutor of the competent High Public Prosecutor's Office against a public prosecutor's decision not to institute a prosecution (art. 10, para. 1, of the Public Prosecutor's Office Act), and may reappeal to the Prosecutor General if the initial appeal is rejected (art. 10, para. 2, of the Act).

91. When a person who lodges complaints or accusations considers that his/her fundamental rights as guaranteed by the Constitution have been infringed upon due to a non-indictment decision by a public prosecutor, he/she may request to the Constitutional Court for an adjudgement on constitutional petition for that reason (art. 68 of the Constitutional Court Act).

Restrictions on evidence

92. In order to ensure the due process of law during investigation, victims of torture are granted the right to lodge complaints. In such cases, the torturers are punished, and evidence obtained through torture shall not be used as proof of guilt. More detailed descriptions are found in the comments in relation to articles 4, 13 and 15 of the Convention. In addition, with a view to preventing torture and other cruel, inhuman or humiliating treatment

or punishment, statements on the prohibition of torture are included in the statutes and directives used for educating those who participate in investigations; all institutions and practices are under systematic review and, taking into account that the State shall be held liable for damages to torture victims, those who serve in State organs are obligated to supervise persons working under their charge, preventing illegal acts such as torture. More detailed descriptions are found in the comments in relation to articles 10, 11 and 14 of the Convention.

Paragraph 2

93. The Constitution of the Republic of Korea and the international conventions to which the Republic of Korea accedes and promulgates comply with article 2, paragraph 2, of the Convention stipulating that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

94. The Constitution of the Republic of Korea states that the freedoms and rights of citizens may be restricted by law only when necessary "for national security, the maintenance of law and order or for public welfare" (art. 37, para. 2, of the Constitution). However, "national security", "the maintenance of law and order" and "public welfare" are understood as norms included in fundamental rights in order to mitigate conflicts between certain rights and to guarantee all possible human rights. Strict and limited implementation of the National Security Law has been carried out, even when fundamental rights were to be limited on the basis of this concept. In addition, the Constitution provides that even when such restrictions are imposed "no essential aspect of freedoms or rights shall be violated" (art. 37, para. 2, of the Constitution), thus preventing abuse of the restriction by the State. Therefore, in the Republic of Korea, no reason can justify acts which violate the essential aspects of fundamental human rights.

95. According to article 4 of the International Covenant on Civil and Political Rights, which the Republic of Korea has ratified and promulgated, even during officially declared public crises which threaten to destroy the nation, no one shall be subject to torture or cruel, inhuman and insulting treatment or punishment. In addition, according to the Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War; the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War; and the Protocol Additional of 8 June 1977 to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, significant violations of the conventions' provisions on armed conflict are considered to be war crimes, and torture is one of these violations. On the other hand, article 6, paragraph 1, of the Constitution of the Republic of Korea states that international covenants which are ratified and promulgated by the Republic of Korea have the same effects as domestic law. Therefore, even when extraordinary martial law is proclaimed to maintain public safety and order by the mobilization of the military force in time of

war, armed conflict or similar national emergency; hostilities against enemies; and even when there is extreme disorder with significant difficulties existing in administrative and judicial functions, bodily injuries such as those inflicted by torture are absolutely prohibited under any, albeit exceptional, circumstances, and any violation shall be punished in wartime as well as in time of peace.

Paragraph 3

96. The relevant statutes and case-laws of the Republic of Korea satisfy the conditions of article 2, paragraph 3, of the Convention, which provides that an order from a superior officer or a public authority may not be invoked as a justification of torture.

97. Every public official, in the performance of his duties, shall obey any order of his superior officer as an obligatory duty (art. 57 of the National Civil Service Act; art. 46 of the Local Civil Service Act). Public prosecutors, prosecution public officials and police officials are, in the performance of their duties, under instruction and supervision of their superiors, in accordance with the provisions of the Public Prosecutor's Office Act (arts. 7 and 46) and the National Police Agency Act (art. 24). However, as orders with respect to duties must be given according to due process and as they must not conflict with any laws, the execution of illegal orders given by superiors, e.g. orders of torture, cannot be regarded as one's obligatory duty. Therefore, if a public official commits an act of torture according to the orders of his superior, he is not exempted from penal responsibility.

98. The Supreme Court of the Republic of Korea also states: "As for a public official who performs his duties, his superior officer has no authority to order him to commit illegal acts such as crimes. Although it is true that a public official is under obligation to obey any legal order of his superior officer, if the order is clearly illegal or unlawful, such as an order to commit an act of cruelty to a person who has been summoned as a witness, it is no longer regarded as an obligatory duty to follow the order and therefore, he is not required to obey it" (Supreme Court judgement 87 DO 2358, rendered on 23 February 1988).

99. Military organizations, unlike civil society, require perfect unity to function in an orderly fashion. None the less, orders from superior agencies or officers are expected to be obeyed only if they are legally legitimate. In cases in which illegal orders are given by superiors, such as instructions to commit acts of torture, the subordinates are under no obligation to follow them. They are not subject to penal punishment for mutiny. Rather, if persons execute such illegal orders, they are punished according to the relevant provisions of the Military Penal Law and the Criminal Code.

## Article 3

100. The Constitution and relevant laws of the Republic of Korea correspond with article 3 of the Convention, ensuring that a person will not be extradited to another State where he might be treated in a manner contrary to the Convention, thus preventing human rights violations.

101. As mentioned earlier, all citizens shall be assured of human worth and dignity, the right to pursue happiness, and protection from torture. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals (art. 10 of the Constitution). As for the fundamental human rights guaranteed by the Constitution, foreigners shall be treated equally as nationals (art. 11, para. 1). Considering the ideals and the spirit of the Constitution, the Government of the Republic of Korea shall not expel, return or extradite a person to another State where there are substantial grounds to suspect that he would be in danger of being subjected to torture.

102. Under any relevant domestic laws related directly or indirectly to the Convention, the Government of the Republic of Korea shall not extradite a person to another State where he is in danger of being subjected to torture.

(a) The Extradition Act (5 August 1988, Law No. 4015) provides that a criminal may be extradited only if the punishment for an extraditable crime committed corresponds to capital punishment, imprisonment with or without hard labour for life or for more than one year under the laws of the Republic of Korea and the requesting State (art. 6 of the Extradition Act). However, the criminal shall not be extradited in a case where there is no valid reason to suspect that he committed an extraditable crime (unless he was convicted in the requesting State), or in a case where it is deemed that the criminal might be punished or suffer unfavourable consequences due to reasons of race, religion, nationality or specified social organizations (art. 7, subparas. 3 and 4, of the above Act);

(b) Moreover, the above Act provides that no criminal shall be extradited if the extraditable crime committed is of a political nature; or if it is deemed that an extradition request is made for the purpose of bringing to trial a separate crime of a political nature committed by the same criminal; or if the extradition is requested to execute a sentence of punishment for such crimes (art. 8 of the Act). The Act states that no criminal shall be extradited in a case where it is deemed inhuman to extradite him in light of the nature of the extraditable crime and the environment of the criminal (art. 9, subpara. 5, of the Act), prohibiting extradition of cases in which acts of torture are foreseen;

(c) The Immigration Control Act provides that any foreigner who receives a deportation order for unlawful entry, etc. shall, in principle, be repatriated to the country of his nationality or citizenship. If such measures are impossible he may be repatriated to another country of his choosing (art. 64, para. 2, of the Immigration Control Act). On the other hand, it is provided that no refugee shall be repatriated to a country which, under article 33, paragraph 1 of the Refugee Agreement, prohibits deportation or repatriation (art. 64, para. 3, of the above Act). Therefore the Government of the Republic of Korea shall repatriate foreigners who receive deportation orders to countries to which they desire to be repatriated, according to the Immigration Control Act. For humanitarian reasons, foreigners shall not be repatriated in cases where there are substantial grounds to believe that persons are in danger of being subjected to torture in the country of his nationality;

(d) The International Judicial Cooperation on Criminal Cases Act (8 March 1991, Law No. 4343) provides that mutual cooperation is not required in cases where it is deemed that a criminal might be punished or subject to unfavourable penal consequences due to his race, nationality, sex, religion, or social status, or the fact that he is a member of a specified social organization, or by reason of his maintaining different political views, or where it is deemed that the crime under consideration for mutual cooperation is one of a political nature, or if the request for mutual cooperation is made for the purpose of an investigation or trial of another crime of a political nature committed by the same criminal (art. 6, subparas. 2 and 3, of the above Act). Therefore, this Act indirectly prevents the criminal from being deported, repatriated or transferred in a case where there are substantial grounds for believing that he is in danger of being subjected to torture in the requesting State.

103. Furthermore, because the Convention is an international treaty duly concluded and promulgated under the Constitution it has the same effect as domestic laws. Therefore, article 6 of the Constitution prohibits the expulsion, return or extradition of a criminal to another State when there are substantial grounds for believing that he would be in danger of being subjected to torture. This constitutional provision is applied in the Republic of Korea in the same capacity as domestic laws.

104. In addition, the Republic of Korea observes article 3, paragraph 2, of the Convention which provides that, for the purposes of determining whether there are substantial grounds for believing that a person would be in danger of being subjected to torture if that person was to be expelled, returned, or extradited to a relevant State, the competent authorities shall take into account all relevant considerations including, where applicable, the existence of a consistent pattern of gross, flagrant or mass violation of human rights in the State concerned.

## Article 4

105. The Criminal Code of the Republic of Korea does not have a specific provision which deals directly with torture. However, the current Criminal Code and relevant special acts contain provisions which are sufficient to punish those who commit torture as defined in article 1 of the Convention, fulfilling the requirements of article 4, paragraphs 1 and 2, of the Convention, and even designating acts of cruelty as punishable.

106. Current laws contain special provisions related to persons who engage in judicial prosecutorial, police or other functions involving physical restraint.

(a) Article 125 of the Criminal Code provides that "a person who, in performing or assisting in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits an act of violence or cruelty against a criminal suspect or against another person while performing his duties, shall be punished by penal servitude not exceeding 5 years, and suspension of qualifications not exceeding 10 years". It is understood that an act of violence signifies the exercise of force against the human body, not necessarily exerted directly against a person, and that an act

of cruelty includes all other acts, excluding acts of violence, which cause a person to suffer mentally and physically. Meanwhile, torture as defined in article 1 of the Convention implies severe pain or suffering, both physical and/or mental, imposed by public officials, etc. to extract confessions or information relevant to a crime. Article 16 of the Convention stipulates provisions for cruel, inhuman or degrading treatment other than torture. Thus, it may be interpreted that the concept of torture under the Convention is defined as more severe than concepts of an act of violence or cruelty under the Criminal Code of the Republic of Korea. Therefore, it may be said that, in a case in which a person who engages in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits torture, he shall be punished under article 125 of the Criminal Code;

(b) The Criminal Code provides that if a person who performs or assists in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits an act of violence against another by abusing his official authority, he shall receive aggravated punishment of penal servitude not exceeding 7 years and suspension of qualifications not exceeding 10 years (art. 124, para. 1, of the Criminal Code). In other words, if a person who engages in investigative activities arrests or imprisons another by abusing his official authority, he is subject to aggravated punishment for the higher degree of severity of the crimes he has committed;

(c) Furthermore, a person who commits such crimes as described in the preceding paragraphs and causes injury, shall be punished by penal servitude for a minimum of one year. If his crime causes the death of another, he shall be punished by penal servitude of three years to life (art. 4-2 of the Act Concerning Aggravated Punishment Against Specified Crimes);

(d) On the other hand, if persons who perform activities involving physical restraint commit crimes for which the punishment is more severe than that provided for in article 125 of the Criminal Code, such as rape or an indecent act by compulsion, as will be mentioned later, the act is regarded as a compound crime, and the punishment provided for the most severe crimes shall be imposed (art. 40 of the Criminal Code).

107. If a person, other than a public official as mentioned above, commits acts of torture as defined in article 1 of the Convention, he shall be punished for the following crimes, under the relevant provisions elaborating upon the pattern of the crimes, such as an act of violence, intimidation, bodily injury, false arrest and illegal confinement. Specifically, if a public official commits a crime by taking advantage of his official authority, he shall be punished with an increase by one half of the penalty specified for the crimes committed (art. 135 of the Criminal Code):

(a) Act of violence (art. 260, para. 1, of the Criminal Code), penal servitude not exceeding two years;

(b) A person who commits an act of violence, thereby causing death or injury, shall receive the same punishment as for crimes of bodily injury, aggravated bodily injury, or death resulting from bodily injury, according to the results (art. 262 of the Criminal Code);

(c) Intimidation (art. 283, para. 1, of the Criminal Code), penal servitude not exceeding three years;

(d) Obstructing a person, through force, from exercising his rights (art. 324 of the Criminal Code), penal servitude not exceeding five years;

(e) Bodily injury (art. 257, para. 1, of the Criminal Code), penal servitude not exceeding seven years;

(f) Aggravated bodily injury (endangering a person's life or causing him to be crippled or incurably diseased) (art. 258 of the Criminal Code), penal servitude for a minimum of 1 year, but not exceeding 10 years;

(g) Death resulting from injury (art. 259 of the Criminal Code), penal servitude for a minimum of three years;

(h) Cruelty to another under his protection or supervision (art. 273, para. 1, of the Criminal Code), penal servitude not exceeding two years;

(i) Death or injury resulting from cruelty (art. 275 of the Criminal Code), more severe punishment by comparing penalties of abandonment, abandoning infants, and cruelty to a person under his protection or supervision, resulting in injury;

(j) False arrest or illegal confinement (art. 276, para. 1, of the Criminal Code), penal servitude not exceeding five years;

(k) Aggravated false arrest or aggravated illegal confinement (art. 277 of the Criminal Code), penal servitude not exceeding seven years;

(l) Special false arrest or illegal confinement (art. 278 of the Criminal Code), punishment by increasing the penalty specified for the relevant crime by one half;

(m) Sexual intercourse with a female under his protection or supervision through the abuse of authority (art. 303 of the Criminal Code), penal servitude not exceeding five years;

(n) Rape (art. 297 of the Criminal Code), penal servitude for a minimum of three years;

(o) Indecent act by compulsion (art. 298 of the Criminal Code), penal servitude not exceeding 10 years;

(p) Death or injury resulting from rape or an indecent act by compulsion (art. 301 of the Criminal Code), penal servitude for five years to life;

(q) Defamation (art. 307 of the Criminal Code), penal servitude not exceeding two years;

(r) Insult (art. 311 of the Criminal Code), penal servitude not exceeding one year;

(s) Bodily injury, an act of violence, false arrest, illegal confinement, or intimidation committed at night and/or by two or more persons (art. 2, para. 2, of the Act Concerning the Punishment Against Acts of Violence and Other Crimes), punishment by increasing the penalty specified for the relevant crime by one half;

(t) Bodily injury, an act of violence, false arrest, illegal confinement, or intimidation committed by using deadly weapons (art. 3 of the above Act), penal servitude for a minimum of three years.

108. Furthermore, the Criminal Code of the Republic of Korea provides that, in a case in which a public official abuses his authority and obstructs a person from exercising a right to which he is entitled, the official shall be punished by penal servitude not exceeding 5 years and suspension of qualifications not exceeding 10 years for the act itself, although the crime committed was not an act of torture, violence or cruelty (art. 123 of the Criminal Code).

109. The Military Criminal Code provides that if a soldier treats a person cruelly or commits an act of cruelty through the abuse of his official authority, he shall be punished by penal servitude not exceeding five years (art. 62 of the Military Criminal Code). Furthermore, the National Security Planning Agency Act stipulates that a staff member of the National Security Planning Agency who, by abusing his official authority, illegally arrests or confines a person, or causes a person to perform a duty for which he is not responsible, shall be punished by penal servitude not exceeding seven years and suspension of qualifications not exceeding seven years (art. 19 of the National Security Planning Agency Act).

110. The Criminal Code of the Republic of Korea provides that when an intended crime is not completely carried out or if the intended results fail to occur, it shall be punishable as an attempted crime only if the punishment for the attempted crime is specifically provided for in each article concerned. The punishment for an attempted crime may be mitigated from the degree of punishment for a crime completely carried out (arts. 25 and 29 of the Criminal Code). Regarding this statutory mitigation for criminal attempts, penal servitude for life may be reduced to limited penal servitude for a minimum of seven years. Limited penal servitude and a fine may be reduced by one half of the term of the punishment (art. 55, para. 1, of the Criminal Code).

(a) Under the current laws, the punishment for attempted criminal acts is provided for only in articles for unlawful arrest and unlawful confinement by public officials (art. 124, para. 2, of the Criminal Code); bodily injury (art. 257, para. 3, of the Criminal Code); false arrest and illegal confinement (art. 280 of the Criminal Code); intimidation (art. 286 of the Criminal Code); rape and indecent act by compulsion (art. 300 of the Criminal Code); acts of violence (art. 6 of the Act Concerning the Punishment Against Acts of Violence and Other Crimes); and abuse of official authority by staff members of the National Security Planning Agency (art. 19, para. 3, of the National Security Planning Agency Act). Therefore, in a case in which one of the crimes enumerated above also involved attempted torture, the criminal shall be punished by the penalties in the above provisions or by mitigated penalties;

(b) However, given that the current articles of the Criminal Code do not provide for punishment against attempted criminal and violent or cruel acts by investigative public officials (art. 125 of the Criminal Code), there has been some discussion as to whether or not measures need to be taken to amend the various articles if the Republic of Korea accedes to the Convention. For an act to be declared torture as defined in the Convention, it must have caused severe pain or suffering, both mental and/or physical. In this regard, attempted torture under the Convention is understood as the initiation of an act of torture which does not cause severe pain or suffering. Also, as mentioned above in paragraph 106, article 125 of the Criminal Code of the Republic of Korea punishes an act of violence or cruelty. Therefore, even if acts of investigative public officials constitute only attempted torture as defined in the Convention, their acts are still punishable under article 125 of the Criminal Code of the Republic of Korea;

(c) In summary, when a public official of the Republic of Korea commits an act constituting attempted torture as defined in the Convention, he shall be sentenced to punishment for committing, during the performance of his duties, cruel and/or violent acts which correspond to attempted bodily injury, attempted false arrest or illegal confinement, intimidation or attempts to intimidate, attempted rape or indecent act by compulsion, or an act of violence.

111. The Criminal Code of the Republic of Korea contains provisions for punishing co-principals or participants in a crime, according to the concreteness of their acts. Therefore, accomplices are punished as principal offenders of the said crime or given mitigated sentences.

(a) When two or more persons have jointly committed a crime, each shall be punished as a principal offender for the crime committed (art. 30 of the Criminal Code);

(b) Accessories to a crime committed by another person shall be punished for aiding and abetting, but their sentences shall be mitigated to less than that of the principals (art. 32 of the Criminal Code);

(c) If a person collaborates in the commission of a crime of which a person's status or position is an element, although he lacks such status, he shall be punished as a co-principal, an instigator, or an accessory, according to the concreteness of his act. However, if the severity of punishment varies with the accused person's status, the more severe punishment shall not be imposed on the person who lacks such status (art. 33 of the Criminal Code);

(d) A person who commits a crime by instigating or aiding and abetting another person who is under his control and supervision shall be punished with an increase by one half of the maximum terms of punishment provided for the principal in a case of instigating a crime, and the full penalties shall be imposed on the principal in a case of aiding and abetting (art. 34 of the Criminal Code).

112. On the other hand, if an exercise of force by a person causes a degree of mental and physical suffering to another person, and if such an act is

conducted in accordance with the law, or in pursuit of accepted business practices, or other actions which do not violate social mores, the act is not punishable (art. 20 of the Criminal Code).

(a) Disciplinary actions taken within reason by a principal toward students and those by the head of a juvenile reformatory, etc. are acts in accordance with the law and are not punishable. The latter part of article 1, paragraph 1, of the Convention provides that torture does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. Therefore, the Criminal Code of the Republic of Korea does not contradict the Convention in this regard;

(b) However, such exercise of disciplinary force shall be made within necessary and acceptable limits. And if social mores are violated, the act of exerting force shall be punished. For example, if an officer hits a subordinate (e.g. private) on the shoulder three times with a rod in order to penalize the subordinate for misconduct and the use of profanity toward his battalion commander, the officer is beyond the limits of disciplinary punishment (Supreme Court judgement 71 DO 179, rendered on 6 April 1971). Furthermore, if a teacher, under the impression that a student used profane language directed at him, assaults the student without confirmed reason and causes injury, the act is considered an act of violence (Supreme Court judgement 80 DO 762, rendered on 9 September 1980).

113. Statistics gathered since 1990 on those who have been punished for violent or cruel acts committed by abusing their authority while engaged in investigations reveal that there were three such cases in 1990, two in 1991, one in 1992, three in 1993, and four in 1994. These are considered to be very low numbers (statistics for crimes other than violent or cruel acts committed through the abuse of authority were not available because they were not classified into separate groups). Factors influencing these statistics may be that the principle of presumption of innocence applies to these crimes (cruel or violent acts committed through the abuse of authority) as they do to other crimes, and that such acts are often committed in covert or undetectable locations, making them difficult to prove. Most importantly, however, these statistics reveal changes in the perception of human rights held by those in the Republic of Korea who engage in investigative processes.

114. Furthermore, in a case in which a public official is involved in committing torture, the punishments stipulated above are accompanied by the following additional consequences:

(a) When a public official is involved in committing torture, an act which violates the relevant laws, the person entitled to appoint the official shall impose disciplinary actions distinct from the above punishments (art. 78, para. 1, of the National Civil Service Act; art. 69 of the Local Civil Service Act). Specifically, when an act of cruelty is committed in military camps, the supervisor of the offender shall also be subjected to disciplinary action, taking into account the strict hierarchical nature of the military;

(b) If a public official has been disqualified, or his qualifications suspended pursuant to a judgement of the court, or if he has been sentenced to

penal servitude or a punishment heavier than imprisonment without hard labour, including sentences with a stay period or deferred sentences, he shall be deprived of his status as a public official (art. 33 of the National Civil Service Act; art. 31 of the Local Civil Service Act);

(c) If the State or local government has compensated individuals who suffered damage or injury inflicted by the unlawful action of a public official, such as torture, the State or local government may demand reimbursement or compensation from the public official. In other words, the public official shall be liable for reimbursement to the State or local government (art. 2 of the National Compensation Act);

(d) In case the State is not held liable for damages or injuries caused by unlawful acts such as torture committed by a public official, the official must bear direct civil liability toward the victim(s).

115. If a public prosecutor decides not to indict a person suspected of committing torture, processes of appeal and reappeal, constitutional petition and request for ruling are available to the victims of torture. These measures are understood as guarantees of punishment against torture.

## Article 5

116. The Criminal Code of the Republic of Korea is in accordance with article 5, paragraph 1, of the Convention which delineates the necessary measures for establishing jurisdiction on torture prevention.

117. The Criminal Code of the Republic of Korea adopts the territorial principles (arts. 2 and 4 of the Criminal Code), complemented by the nationality principle (art. 3 of the Criminal Code) and the protective principle (arts. 5 and 6 of the Criminal Code).

(a) Articles 2 and 4 of the Criminal Code are consistent with article 5, paragraph 1 (a), of the Convention. The Criminal Code shall apply both to Korean nationals and to foreigners who commit crimes within the territory of the Republic of Korea (art. 2), which encompasses land, sea and air. Some are of the opinion that the words "who commit crimes" only specifies criminal conduct; however, the words are understood to include both the criminal action and the results of the crime. The word "crimes" is suggested to include only the commission of crime but is acknowledged to include the commission and/or the results of the crime. The Criminal Code of the Republic of Korea also applies to foreigners who commit crimes on board a Korean vessel or Korean aircraft outside the territory of the Republic of Korea (art. 4 of the Criminal Code). This stipulation is the result of the application of the flag-State principle. The words "outside the territory of the Republic of Korea" include the high seas, territorial seas and air of foreign countries;

(b) Article 3 of the Criminal Code of the Republic of Korea corresponds to article 5, paragraph 1 (b), of the Convention. The Criminal Code of the Republic of Korea also applies to all Korean nationals who commit crimes outside the territory of the Republic of Korea (art. 3 of the Criminal Code). It is the result of the application of the territorial principle complemented

by the nationality principle. The words "Korean nationals" mean those who have the nationality of the Republic of Korea. The relevancy of the Criminal Code depends on whether or not they are nationals of the Republic of Korea at the time the crimes are committed;

(c) Articles 5 and 6 of the Criminal Code are consistent with article 5, paragraph 1 (c), of the Convention. The Criminal Code applies to foreigners who commit crimes of insurrection or foreign aggression outside the territory of the Republic of Korea, and who commit crimes against the Republic of Korea or her nationals outside the territory of the Republic of Korea (arts. 5 and 6 of the Criminal Code).

118. The Criminal Code does not recognize any jurisdiction over crimes, including torture, other than those jurisdictions mentioned above. Therefore, the Republic of Korea does not have any jurisdiction over crimes such as torture committed abroad by foreigners against non-Korean nationals. It is understood that the Republic of Korea shall extradite criminals who commit torture, according to article 8 of the Convention.

119. Therefore, it is construed that article 5, paragraph 3, of the Convention, which provides for the functioning of the Convention in the legal system of the Republic of Korea, does not have any special significance concerning the domestic laws of the Republic of Korea.

## Article 6

### Paragraph 1

120. The Penal Procedure Code and the Extradition Act of the Republic of Korea satisfy the requirements of article 6, paragraph 1, of the Convention which stipulates that a person alleged to have committed torture shall be taken into custody by the authorities of the country in which he is found, or have other legal measures taken to ensure his detainment.

121. As mentioned in relation to article 5 of the Convention, the Criminal Code of the Republic of Korea shall apply both to Korean nationals and foreigners who commit crimes within the territory of the Republic of Korea. Furthermore, even in cases in which Korean nationals commit crimes outside the territory of the Republic of Korea or in which foreigners commit crimes against Korean nationals outside the territory of the Republic of Korea, provided that they are within the territory of the Republic of Korea, the Criminal Code of the Republic of Korea is also applicable to them, and it is possible to exercise jurisdiction. However, if a foreigner who has committed crimes outside the territory of the Republic of Korea is found within the territory of the Republic of Korea, it is impossible to apply the Criminal Code of the Republic of Korea to him. In that case, he must be extradited according to the proper laws on the basis of the demand for his extradition by the State concerned. Moreover, although the Republic of Korea has jurisdiction over criminals, if the Government chooses not to exercise its jurisdictional authority, in principle, the criminals must be extradited to other States which have jurisdiction, in accordance with relevant laws (refer to art. 7, para. 1, of the Convention).

122. In a case in which a person commits an act of torture, or participates in an act of committing torture, the subsequent punishment provided for by law is heavy. Therefore, in a case in which there is sufficient reason to suspect that a person has committed crimes, he shall be arrested if he refuses to comply with the request of the investigative agencies to appear before them or if there is reasonable grounds to suspect that he may resist compliance. He shall be detained if there are reasonable grounds to suspect that he may attempt to escape or destroy evidence (arts. 200-1 and 201 of the Penal Procedure Code).

(a) A warrant for arrest or detention shall be issued by the competent district court judge upon the request of the public prosecutor. Judicial police officers must request a warrant from the public prosecutor who, in turn, requests the warrant from the competent district court judge. The judge may then issue the warrant (art. 200-2, para. 1, and art. 201, para. 1, of the above Code);

(b) A warrant for arrest or detention shall be executed by a judicial police officer under the direction and authority of a public prosecutor. However, a warrant for arrest or detention issued against a suspect who is in a prison or detention house shall be executed by a corrections officer under the direction and authority of a public prosecutor (arts. 200-5 and 209, and art. 81, paras. 1 and 3, of the above Code);

(c) In executing a warrant for arrest or detention, the warrant must be shown to the suspect, who shall promptly be taken to the designated place of custody (arts. 200-5 and 209, and art. 85, para. 1, of the above Code);

(d) However, in special circumstances, as mentioned in paragraphs 80 and 81, exemptions from obtaining the mandatory warrant are admitted, such as a case of urgent arrest.

123. In a case in which a person has committed torture or participated in an act of torture and is to be extradited to a foreign country, he may be arrested, if it is necessary (art. 19 of the Extradition Act).

(a) The Minister of Justice shall, upon receiving documents related to an extradition request from the Minister of Foreign Affairs, send the documents to the director of the Seoul High Prosecutor's Office and order the director to have a public prosecutor under his jurisdiction request the Seoul High Court for a review of the permissibility of the extradition or of the impossibility of extraditing the criminal under the extradition treaty or the Extradition Act, or whether it is deemed reasonable not to extradite the criminal (art. 12, para. 1, of the Act);

(b) When the Minister of Justice issues an order to request an extradition review under article 12, paragraph 1, of the Extradition Act, the public prosecutor shall arrest the criminal on an extradition arrest warrant, except in a case in which the criminal has a fixed residence, and there is no suspicion that the criminal might attempt to escape (art. 19 of the Act);

(c) The extradition arrest shall be carried out by a judicial police officer under the direction and authority of the public prosecutor, and the

extradition arrest warrant shall be presented without fail to the criminal. The judicial police officer shall inform the criminal of the reason for his arrest and his entitled right to appoint a lawyer, and transfer the custody of the criminal to the public prosecutor without delay (art. 20, paras. 1-3 of the Act);

(d) As for an arrest based on an extradition arrest warrant, the provisions of the Penal Procedure Code regarding procedural matters such as the right to interview are applicable (art. 20, para. 4, of the Act).

124. In the Republic of Korea, necessary legal measures may be taken to ensure the presence or detention of a person suspected of committing acts of torture, such as arrangements for a search or ban against departure.

125. The Penal Procedure Code and the Extradition Act provide that a warrant of arrest, detention, or extradition shall include a term of validity and a footnote indicating that if the term of validity elapses, the warrant shall not be executed and shall be returned, restricting days of detention to the necessary minimum (arts. 200, 209 and 75 of the Penal Procedure Code and art. 19, para. 3, of the Extradition Act). Also, in order to prevent unreasonable arrest, detention or extradition arrest, examinations of the legality of confinement or extradition arrest are provided for (art. 214-2 of the Penal Procedure Code; art. 22 of the Extradition Act).

126. If judicial police officers detain a suspect, the suspect shall be transferred to the public prosecutor within 10 days. If a public prosecutor arrests a suspect or receives a suspect from a judicial police officer, he shall decide within 10 days whether or not to institute a public prosecution. However, it is possible to extend the detention period once, for no longer than 10 days (arts. 202, 203, 203-2 and 205 of the Penal Procedure Code). To prevent a lengthy extradition arrest period, the Extradition Act also provides that if a criminal is arrested under the extradition warrant, the extradition review shall be requested within three days of the arrest (art. 13, para. 2 of the Extradition Act). In this case, the court shall make a decision on the review within two months from the date of detention (art. 14, para. 2, of the above Act).

Paragraph 2

127. Provisions of the Penal Procedure Code and the Extradition Act of the Republic of Korea satisfy the conditions of article 6, paragraph 2, of the Convention which provides that any involved State party or country shall make a preliminary inquiry into the facts to secure public prosecution or extradition of a suspect.

128. The public prosecutor and judicial police officers shall, when they ascertain that an offence has been committed, investigate the offender, the facts of the offence and the evidence, and necessary examinations may be made in order to carry out such investigations (arts. 195, 196 and 199 of the Penal Procedure Code). In addition, they may request for persons other than the suspect to give factual statements and to ask for expert evidence, interpretation or translation. Furthermore, the public prosecutor and

judicial police officers may seize, search for or inspect evidence, in accordance with the warrant issued by a judge of the competent district court (arts. 215 and 221 of the Penal Procedure Code).

129. A court which receives a request for an extradition review shall give the criminal and his lawyer an opportunity to state their opinions. The court may also examine witnesses and order an appraisal, interpretation or translation (art. 14, paras. 5 and 6, of the Extradition Act). The public prosecutor may conduct search and seizure in accordance with the warrant issued by a judge of the Seoul High Court (art. 17, para. 1, of the Act). In a case in which the arrested suspect is a foreigner, the Minister of Home Affairs may, with the aid of international criminal police organizations, conduct inquiries into any previous conviction(s) of the suspect, seek facts and certification of information needed to investigate the suspect, and request any relevant materials (art. 38 of the International Judicial Cooperation Criminal Cases Act).

Paragraph 3

130. In accordance with the Constitution, the Vienna Convention on Consular Relations, which the Republic of Korea acceded to, ratified and promulgated, has the same effect as the domestic laws of the Republic of Korea.

131. Therefore, consular officers shall be free to communicate with nationals of the sending State and shall have access to them. In a case in which a national of the sending State is arrested, imprisoned, in custody pending trial, or is detained in any other manner, the competent authorities of the receiving State shall immediately inform the consular post of the sending State, if the detainee so requests. Any communication addressed to the consular post by the detainee shall also be forwarded by the said authorities without delay. In addition, consular officers shall have the right to visit a national of the sending State who is imprisoned, in custody or in detention for the purpose of communicating and conversing with him, and arranging for his legal representation.

132. Guidelines for the Ministry of Justice of the Republic of Korea (BOP KOMI No. 01129-299), entitled "Directives for the Investigation of Crimes Committed by Foreigners", dated 30 April 1993, stipulate the following:

(a) When investigative agencies arrest or detain a foreigner, they shall immediately inform him that he is entitled to freely interview and communicate with consular or honorary consular officers of his home State stationed in the Republic of Korea, and that at his request, the consular officers or the honorary consular officers shall be immediately notified of his arrest or detention;

(b) In addition, if the person arrested or detained so requests, the investigative agencies shall send a communiqué containing the detainee's personal data and the particulars of his case, including his commission of a crime, the date and location of his arrest or detention, his current location, etc. to the head of honorary head of the consular post.

133. If the person in custody is stateless, in accordance with article 6, paragraph 3, of the Convention, which has the same effect as the Republic of Korea's domestic laws, the Republic of Korea shall assist him in communicating immediately with the representative of the State in which he principally resides.

134. Regarding matters which require caution in the investigation of foreigners, the Supreme Public Prosecutor's Office distributed a Manual for the Investigation of Foreigners (published on 31 August 1995) to each public prosecutor's office, thus promoting human rights during investigation or detention.

Paragraph 4

135. In accordance with article 36 of the Vienna Convention on Consular Relations and article 29 of the Extradition Act, when the Minister of Foreign Affairs receives from the Minister of Justice a take-over warrant, or is notified of the fact that the criminal is detained where he has been extradited and of the time period within which he is to be extradited, he shall notify the requesting State of the relevant details.

136. Furthermore, the Republic of Korea, pursuant to article 6, paragraph 4, of the Convention, shall immediately notify the States referred to in article 5, paragraph 1, of the Convention of the fact that a person is in custody and of the circumstances which warrant his detention; of the findings of the preliminary inquiry in compliance with article 6, paragraph 2, of the Convention; and of whether or not it intends to exercise jurisdiction.

Article 7

Paragraph 1

137. In the Republic of Korea, all cases filed and investigated are ultimately dealt with by a decision of a public prosecutor who presides over the investigation. Therefore, in a case in which a suspect in crimes such as torture is not to be extradited to the State which has jurisdiction, pursuant to article 5 of the Convention, the case shall be transferred to a public prosecutor (art. 246 of the Penal Procedure Code).

Paragraph 2

138. The Penal Procedure Code of the Republic of Korea adopts the principle of discretionary indictment on the grounds that (a) it helps to realize concrete justice through the flexible implementation of criminal justice; (b) it offers criminals the opportunity for early rehabilitation, since instituting public prosecution may be reconsidered from the criminological point of view; (c) it accomplishes the objectives of general and special prevention; and (d) limiting the number of unnecessary public trials is economically advantageous.

139. The Penal Procedure Code provides that a public prosecutor may decide whether or not to institute a public prosecution, considering the age, character and conduct, intellect, environment of the offender, the offender's

relation to the injured party, the motive for the commission of the crime, the means and the result, and the circumstances following the commission of the crime (art. 247, para. 1 of the Penal Procedure Code). However, the gravity of the crime must be taken into account above all else.

140. In the case of a court exercising criminal jurisdiction, it shall not distinguish between nationals of the Republic of Korea and foreigners, judging the offender in accordance with the same legal process.

141. In all criminal cases including torture, confirmation of facts must correlate with the evidence (art. 307 of the above Code); the probative value of evidence shall be left to the discretion of judges (art. 308 of the Code); and judges shall decide according to the rules of evidence as prescribed by law (arts. 309 to 318-3 of the Code).

Paragraph 3

142. The Constitution of the Republic of Korea guarantees fair treatment to all who undergo legal procedures involving crimes of torture. In other words, the provisions in article 11, paragraph 1, of the Constitution, which stipulate that "All citizens shall be equal before the law, and there shall be no discrimination against one's political, economic, social or cultural lifestyles and beliefs on account of sex, religion or social status", guarantee that even those who commit acts of torture are not discriminated against during investigation or in the trial procedure. Therefore, even if a person is suspected of committing acts of torture, he will not receive ill-treatment, such as torture, while he is being investigated or tried.

143. As article 12, paragraph 1, of the Constitution of the Republic of Korea and article 27, paragraph 1, provide, respectively, that no citizens shall be arrested, detained, searched, seized, interrogated, punished, placed under preventive restrictions or subject to involuntary labour except as provided by law, and that all citizens shall have the right to be tried in conformity with the law by judges qualified under the Constitution and the law, even a person suspected of committing an act of torture is guaranteed fair treatment under the law in all penal procedures.

144. The illegal arrest or detention of a person suspected of crimes of torture, violating the principle of the presumption of innocence as provided in article 27, paragraph 4, of the Constitution and article 275-2 of the Penal Procedure Code and the warrant system as prescribed by articles 200-2 and 201 of the Penal Procedure Code, shall become grounds for rescission of arrest and detention (arts. 200-5, 209 and 93 of the Penal Procedure Code); compel an examination of the legality of arrest or confinement (art. 214-2 of the Code); and provide sufficient reason for quasi-appeal (art. 417 of the Code). In addition, a person suspected of committing torture shall also be granted the right to make a statement (art. 286 of the Code), the right to refuse to answer questions (art. 200, para. 2, and art. 289 of the Code), the right to apply for evidence (art. 294 of the Code), and the right to request for preservation of evidence (art. 184 of the Code).

145. The Penal Procedure Code provides that when a suspect of torture is arrested or detained, his defence counsel, or the person designated by the

suspect if he does not have defence counsel, shall be informed of the basic facts and nature of the offence, the time and place of detention, the cause for detention, and the right to appoint defence counsel. The suspect may, in so far as laws permit, talk with any other persons, or deliver to or receive from them documents and other relevant materials and also receive medical treatment from a physician (arts. 200-5, 209, 87 and 89 of the Penal Procedure Code).

146. In addition, article 3, paragraph 5, of the Act concerning the Performance of Police Officials provides that a police official who has taken a person to the police station shall notify the person's family or relatives of his status, the location to which he has taken the person, and the objectives and reasons for taking the person, or grant the person the opportunity to have contact with his family without delay and inform the person of his right to prompt assistance of counsel. Paragraph 7 of the same article provides that a person questioned on the street shall not be physically restrained, unless prescribed by laws regarding penal procedure, and shall not be coerced to answer questions against his will. It is evident that these provisions apply to persons suspected of acts of torture. Moreover, the Rules Concerning the Performance of Judicial Police Officials provide that a judicial police official shall inquire into the health of a suspect prior to detaining him, and that he shall report the case to a public prosecutor if there are grounds to believe that the detention may be a significant detriment to the health of the suspect. In addition, it is provided that in case counsel or a person to be appointed as counsel requests judicial police officials to receive documents or other relevant materials to be used for interviewing the detainee, or to arrange for medical treatment for the detainee from a physician, the officials shall deal with the request favourably, and they shall grant the appropriate treatment. Such appropriate treatment includes allowances or hygiene and medical care to the detained suspect (arts. 24, 27-29 of the Rules Concerning the Performance of Judicial Police Officials). These provisions also apply to suspects of crimes of torture.

## Article 8

### Paragraph 1

147. The relevant laws of the Republic of Korea are consistent with article 8 of the Convention in prescribing that offences related to acts of torture be included as extraditable in any extradition treaty existing between States.

148. As mentioned in relation to article 4 of the Convention, a person who, in performing or assisting in activities concerning judgement, prosecution, police or other functions involving physical restraint, commits an act of violence or cruelty against a criminal suspect or against another person while in the performance of his duties, shall be punished by penal servitude not exceeding 5 years and suspension of qualifications not exceeding 10 years. Moreover, a person who arrests or imprisons another by abusing his official authority shall be under aggravated punishment of penal servitude not exceeding 7 years and suspension of qualifications not exceeding 10 years. Furthermore, a person who commits such crimes, thereby causing injury, shall be punished by penal servitude for a minimum of one year, and if his actions

cause the death of a person, he shall be punished by penal servitude for three years to life. In sum, the laws of the Republic of Korea provide for penal servitude for a definite term, a minimum of one year for acts of torture and attempted acts of torture, as well as for all types of cruel and inhuman or degrading treatment or punishment.

149. The Extradition Act of the Republic of Korea provides that extradition may be requested only in cases in which extraditable crimes correspond to capital punishment, imprisonment with or without hard labour for life, or more than one year under the laws of the Republic of Korea and the requesting State (art. 6 of the Extradition Act). Thus, acts of torture or attempted acts of torture are included in the scope of extraditable crimes.

150. The Republic of Korea has concluded extradition treaties with Australia, Canada and Spain, signed such treaties with the Philippines, Chile, Brazil and Argentina, and initialled extradition treaties with Paraguay, Mexico and Thailand. The said treaties on extradition entered into with the above States consider acts of torture or attempted acts of torture as extraditable offences.

Paragraphs 2 and 4

151. Since the Extradition Act of the Republic of Korea allows extradition to any States under the reciprocity principle (art. 4 of the Extradition Act), with the objective of responding to and aiding international cooperation against crimes, inasmuch as article 8, paragraph 2, of the Convention does not pertain to the Republic of Korea, article 8, paragraph 3, of the Convention is applicable to the Republic of Korea.

152. In cases in which an extradition treaty is not concluded between the Republic of Korea and another State, if it is guaranteed that the said State requesting extradition of a criminal will comply with a request by the Republic of Korea for extradition with respect to the same type of crime such as torture, the criminal shall be extradited for public prosecution, trial, or execution of sentence.

153. The Republic of Korea observes article 8, paragraph 4, of the Convention.

## Article 9

154. Based on the treaties of mutual judicial assistance, the domestic laws of the Republic of Korea comply with article 9 of the Convention by providing the best available support, such as offering evidence concerning penal procedures for crimes of torture.

155. The International Judicial Cooperation on Criminal Cases Act, which provides the scope and procedures for mutual assistance concerning criminal investigations or trials following a request to or from any foreign State, allows mutual assistance on any identical or similar kind of criminal case under the reciprocity principle, even though these cases are not specified in the treaties concluded (art. 4 of the International Judicial Cooperation on Criminal Cases Act).

156. The International Judicial Cooperation on Criminal Cases Act guarantees the best available support of the Republic of Korea on criminal matters of torture by enumerating the following procedures:

(a) The Minister of Foreign Affairs shall, upon receiving a request for mutual cooperation pertaining to an investigation of a criminal case from a requesting State, send the written request for mutual cooperation to the Minister of Justice together with related materials and his opinions (art. 14 of the above Act);

(b) If the Minister of Justice deems, after receiving the written request for mutual cooperation, that it is reasonable to comply with the request, he shall (i) send related materials to the chief of the district public prosecutor's office as sufficient for mutual cooperation and order him to take any measures necessary for mutual cooperation; and (ii) order the head of the correctional facility to take any measures necessary for transferring the person, if the person named in the request is serving a sentence in a correctional facility (art. 15 of the above Act);

(c) The chief public prosecutor, who has received the order as mentioned above, shall instruct any public prosecutor under his control to collect materials necessary for mutual cooperation or to take other necessary measures (art. 16 of the above Act);

(d) In order to collect materials necessary for mutual cooperation, the public prosecutor may demand to personally consult any person connected with the proceedings in order to ascertain his opinions; to entrust any person with an appraisal, interpretation or translation; to demand the owner, holder or keeper of documents or other relevant materials to submit them; to inquire of any public office, public or private organization about the facts thereof; or to demand such office or organization to make a report on necessary and relevant matters. If it is required for mutual cooperation, the public prosecutor may conduct any search and seizure or verification through a warrant issued by a judge at his request. Furthermore, if the evidence, etc. to be delivered to the requesting State is presented to the court, the public prosecutor shall obtain the decision of the court to the effect that it permits the delivery of any evidence thereof. The public prosecutor may direct judicial police officials to make the necessary investigation;

(e) In a case in which the arrested suspect is a foreigner, the Minister of Home Affairs may, with the aid of international criminal police organizations, conduct inquiries into any previous conviction(s) of the suspect, seek facts and the certification of any information necessary for investigating the suspect, and request the relevant materials (art. 38 of the International Judicial Cooperation on Criminal Cases Act).

157. For reference, the Republic of Korea has concluded mutual judicial assistance treaties on criminal matters with Australia and Canada, and signed such treaties with the United States of America and France.

## Article 10

### Paragraph 1

158. The objectives of education in the Republic of Korea are stipulated in article 1 of the Education Act, the fundamental legal statute on education in the Republic of Korea. The Education Act provides that "Education aims, under a humanitarian ideal, to enable all nationals to bring their characters to perfection and to possess the capacity to lead independent lives and the temperament of good citizens, and thereby to devote themselves to the development of democracy and to contribute to the realization of an ideal of human prosperity" (art. 1 of the Education Act). In accordance with the Act, the Republic of Korea has instituted an education system for all nationals. Pursuant to this ideal, all nationals are educated at the level of elementary education in human worth and value, and in the institutions that are relevant to them. Through this education process, it is recognized that every citizen of the Republic of Korea has the right to be protected from acts of torture or other cruel and inhuman or degrading treatment or punishment.

159. The Government of the Republic of Korea has made every effort to inform and educate all nationals on the contents of the Convention, while it urged accession to the Convention. The Ministry of Justice published and distributed a collection of materials regarding the Convention before the accession of the Republic of Korea to the Convention. In addition, the Convention was ratified with a collection of opinions from relevant ministries, an affirmative decision in the State Council, and with the consent of the National Assembly, the representative organ of the nation. Following its ratification, the Convention was immediately promulgated. The Government of the Republic of Korea deposited an instrument of accession with the United Nations on 9 January 1995. The national press reported the significance of the Convention to the nation on 8 February 1995, the date the Convention became effective for the Republic of Korea.

160. The Government capitalized once more on an opportunity to encourage the observance of law, explaining to the citizens the contents of the International Covenants on Human Rights and of the Convention. Residents in some small cities and farming and fishing towns were introduced to and educated about the contents of the Convention through summer legal service activities undertaken by college students. In November 1995, the Republic of Korea's accession to the Convention and its relevant Convention were included in a volume titled Law and Living (90,000 copies published), an introductory book on the subject of law for citizens. Copies were distributed throughout the nation. Those who had contributed to endorsing and promoting human rights were honoured on 10 December 1995, in conjunction with Human Rights Day, which is celebrated annually in the Republic of Korea. Also on that day, the significance of the accession to the Convention was publicized in the national press. Moreover, a "Human Rights Week" was established in early December 1995, with many activities including answering questions regarding human rights and declaring to the nation that the Convention against Torture had become effective in the Republic of Korea.

161. The various investigative agencies of the Republic of Korea, such as the Public Prosecutor's Office and the National Police Agency, educate their

officers and investigators on issues which concern arrest, detention and treatment of a subject and the observance of due process for human rights protection and the treatment of the suspect in accordance with the principle of the presumption of innocence as prescribed in article 27, paragraph 4, of the Constitution. More specifically, one of the objectives of educating investigators is the "enhancement of the ethics of investigators to be staunch protectors of human rights". This requires them to complete such courses as "investigative agents and the reform of their mentality", "investigations and human rights", and "ethics for investigators". These measures are intended to eliminate any potential human rights violations which might occur during the legal process, such as acts of torture or violence. Education in ethics and principles is carried out in order to enhance consciousness of human rights. Education of laws and regulations such as the Penal Procedure Code and the Rules for Investigating Crimes encourages investigators to strictly observe due process as prescribed in law. In sum, education in human rights is carried out in many aspects.

162. On the other hand, the confrontational circumstances between the two Koreas have given rise to some negative reports concerning the human rights record of the National Security Planning Agency, which are contrary to the established facts. The National Security Planning Agency is often engaged in educating those who conduct and take part in investigations, especially concerning matters such as prohibiting torture and observing due process, in order to protect human rights without exception and to eliminate any doubts regarding possible human rights violations.

(a) The National Security Planning Agency has established an "Intelligence Training Institute", an educational institution for investigative practices, teaching the importance of human rights to intelligence agents as well as to police officials and military agents who are in charge of matters associated with human rights. It has also made substantial progress in solving human rights problems;

(b) Courses at the Institute are divided into elementary, intermediate and specialized levels. Lectures on torture prevention are given in each course. Provisions related to human rights, such as those concerning torture as found in the Constitution, the Criminal Code and the Penal Procedure Code, are also taught. Moreover, emphasis is placed on the fact that agents of the National Security Planning Agency are subject to punishment with aggravated penalties if they commit such crimes as false arrest, illegal confinement, obstruction of another person from exercising his rights, and abuse of official authority. Furthermore, in order to prevent violations of human rights, all rules and directives which stress that the human rights of a suspect must be respected are taught at the Institute.

163. Every soldier of the Republic of Korea, through regular and special instructions in military laws, is continuously educated in both the meaning and significance of his obligation to defend the country and the necessity to respect the human rights of the people. Moreover, those who are involved in military investigative agencies, including military prosecutors, are continuously being educated in human rights, either through independent efforts or under the supervision of higher or outside authorities. Furthermore, in military exercises, military legal officers, who have the

same qualifications as lawyers, provide special education programmes focusing on international laws, such as the Geneva Convention relative to the Treatment of Prisoners of War. Every soldier is made aware that acts of cruelty such as torture are significant violations of the international laws of war.

164. As for the public officials who supervise inmates in prisons or in juvenile reformatories, and for other public officials as well, educational programmes are provided at the time of their appointment, and periodically thereafter. These programmes are devised in such a way as to ensure that officials respect the human rights of inmates, including the prohibition of torture. The goal of such programmes is the complete abolition of human rights violations.

165. Public officials who control immigration are educated to comply with all the relevant provisions and rules in the Immigration Control Act, in dealing with and regulating illegal alien residents or controlling foreigners under protection. This helps to guarantee that no human rights violations or unfair treatment will occur. Thus, guidelines and principles which regulate immigration control are fair and ethical.

166. The Republic of Korea supports the activities of human rights organizations, including the Korean Bar Association and the Korean League for International Endorsement of Human Rights, towards educating people on human rights. The Republic of Korea protects and guarantees education in torture prevention by those organizations.

Paragraph 2

167. Article 198 of the Penal Procedure Code provides that in investigations by a public prosecutor, judicial police official or others concerned with investigation secrecy shall be maintained in order not to violate the personal rights of a suspect or other persons(s). They shall not interfere with the rights of others in the course of an investigation.

168. Based on the Constitution and the Penal Procedure Code, the Ministry of Justice has issued Rules Concerning the Performance of Judicial Police Officials (by order of the Ministry of Justice), and article 3 of the Rules provides that a judicial police official shall bear in mind that "he shall make efforts to be trusted by the people, as his mission is to protect the freedom and rights of the people". In addition, article 7 of the Rules states that "a judicial police official shall take care to maintain secrecy in investigating a crime, in order to avert the existence of any obstacles to the investigation. He shall also take care not to defame the honour of a suspect, an accused or other concerned parties", ensuring that a judicial police official will not commit acts of torture or other cruel and inhuman or degrading treatment or punishment against a suspect, etc. in the process of investigation.

169. The National Police Agency has issued various instructions, making every effort to ensure human rights protection.

(a) Rules for Investigating Crimes (Instructions of the National Police Agency No. 57): In a case in which a police officer investigates a person, he

shall respect the human rights of the person and perform his duty in a fair and faithful manner (art. 2, para. 2). In doing so, he shall observe relevant laws and regulations, including the Penal Procedure Code, ensuring that he will not unreasonably infringe upon the rights and freedoms of the person he is investigating (art. 3). As for those who are investigated as criminal suspects and held temporarily while arrest warrants are requested, their names shall be recorded on a register of criminal suspects, and police officers shall be conscientious and diligent in protecting their human rights. This helps to prevent possible incidents of flight, self-imposed injury or suicide (art. 138). During investigations, officers shall not incorporate measures such as torture, acts of violence, intimidation, unduly prolonged arrest, deceit or others which would cast doubt on the voluntary nature of the confession obtained (art. 167);

(b) Rules for Holding and Convoying Suspects (Instructions of the National Police Agency No. 62): Regarding suspects who are detained (or detainees), police officers shall try their best to guarantee the human rights of detainees by treating them fairly (art. 2). The chief of a police station and the person in charge of the detention place shall ensure that warders refrain from using profane language and from acting cruelly towards the detainees. They shall also be vigilant in protecting the human rights of the detainees. Furthermore, tools such as truncheons and clubs are prohibited in detention centres (art. 40);

(c) Rules for Convoy Police Officers Working in Branch Offices (Instructions of the National Police Agency No. 61): Chiefs of police stations who have competence over branch offices shall efficiently manage agents in the branch offices in order to diligently guarantee the human rights of suspects by treating them with due fairness (art. 4);

(d) Manual for Police Affairs:

(i) In detention centres, tools such as truncheons, handcuffs and ropes that physically bind detainees are prohibited. The persons in charge of the detention centres shall supervise and educate police officers not to use profanity or act cruelly toward the detainees, guarding the human rights of the detainees;

(ii) In detaining a suspect, the chief of the relevant department shall review the written records of the investigation and take the appropriate measures;

(iii) A period of emphasis on human rights is established and celebrated every December, in addition to the opening and closing ceremonies of Human Rights Day.

170. In January 1994, the National Security Planning Agency Act was amended, stipulating that staff members of the National Security Planning Agency are obligated to refrain from arresting or detaining a person, compelling him to perform a duty which is not required of him, or obstructing him from exercising his rights, stressing the observance of due process in the performance of their duties. The amended Act also provides that Agency

members shall receive heavier punishment if they violate these obligations. Furthermore, the National Security Planning Agency has issued various statutes and directives in order to ensure the prohibition of torture.

(a) The Statute for Investigative Officers Related to Their Duties (wholly amended in January 1994) urges the staff of the National Security Planning Agency to perform their duties under the following creed:

> "We shall try our best to protect the fundamental rights of the people and to perform our duties with integrity and fairness in order that people will trust us. We shall always observe all the relevant laws and regulations in investigating crimes in order that people will voluntarily assist us."

In addition, the statute provides that the staff shall aid suspects in receiving a medical examination during investigation, and that they shall guarantee the suspects interviews with counsel, a person who desires to serve as counsel, relatives and others, as far as possible, institutionally eliminating any possibilities for the staff to commit acts of torture against the suspects;

(b) Through the Rules for Examining Suspects and other guidelines, taking persons who are suspected of crimes to police stations through coercive measures is prohibited, except for flagrant offenders. In principle, examination of detained suspects shall be made during working hours. Also, such measures as refining language used during the examination have been adopted to eliminate high-handed examination practices. In sum, the National Security Planning Agency is making every effort to establish fair and judicious investigative practices which do not infringe upon the human rights of suspects.

171. In accordance with the Regulation for Military Personnel Related to Their Duties, which is the fundamental guideline for military personnel who live in barracks, the Republic of Korea prohibits the abuse of official authority. It also prohibits private sanctions in articles 14 and 15, respectively, ordering that military personnel must refrain from any form of private sanction at any time, including assault, violent language and acts of cruelty. It also obliges commanders to supervise and direct their subordinates to refrain from assault, violent language and other acts of cruelty in the context of instructing in military discipline and living in military barracks.

172. The Ministry of Justice has established and put into practice several regulations, with the objective of preventing torture against inmates and enhancing their human rights.

(a) Standing Rules for Guard Duty (Instruction of the Ministry of Justice No. 293, 26 November 1993): If a staff member is responsible for guarding inmates he shall closely observe the following instructions:

> (i) He shall respect the character of the inmates and strive to preserve their honour. He shall not abuse his official authority under the pretext of performing his guard duty and maintaining discipline;

(ii) He shall try to be fair and impartial in treating the inmates, and he shall not harbour prejudices, become overcome with resentment, or give special treatment, such as the granting of favours.

It is prohibited to impose additional duties or labour on inmates, other than those which are in accordance with laws and regulations. Private sanctions are also unlawful (art. 16). Disciplinary tools shall be used only by an order of the head of the prison or his representative. However, if the need to utilize such tools is urgent, making it impossible to obtain the necessary orders beforehand, the tools may be utilized immediately, on condition that the actions will be subsequently authorized by the prison director (art. 17). Investigation of persons who have committed illegal acts, and examination of persons who breach order and discipline shall be conducted according to the instructions of the head of the security department, particularly heeding the following (art. 97): during investigation, the mens rea of the criminal shall be made clear, the circumstances of the crime, his attitudes/disposition following the crime, etc. However, investigators must never compel confessions. If the person under investigation denies his guilt regarding the commission of the crime, the investigators shall prove the facts by collecting evidence if possible;

(b) Rules Regarding Discipline and Punishment of Inmates (Order of the Ministry of Justice No. 411, 11 August 1995): If an inmate is to be investigated due to disciplinary violations, a prison officer shall observe the following procedures, ensuring that there will be no infringement upon the human rights of the inmate under investigation (art. 7):

(i) If the officer discovers that an inmate has committed an act violating disciplinary regulations, he shall immediately report the violation to the prison director or to his representative and take measures in accordance with the orders of the director or representative;

(ii) The inmate under investigation shall be allowed sufficient opportunity to make a statement, and the investigation shall proceed with impartial procedures and objectivity of evidence. In addition, actions against the inmate based on prejudice or assumption are prohibited;

(iii) The investigation shall be conducted in the investigation room, apart from the others;

(c) Directive for Holding Juvenile Inmates in the Juvenile Reformatory (Instruction of the Ministry of Justice No. 262, 1 June 1992): In supervising juvenile inmates, the head of a juvenile reformatory shall not treat them with prejudice, discriminate against them, commit acts of cruelty and other uncivil treatment which might cause the juvenile inmates to experience restlessness, fatigue, discord or frustration. The head of the reformatory shall also devise and implement comprehensive measures for preventing incidents of assault, disturbance or escape (art. 19).

## Article 11

173. The Republic of Korea has various institutional devices for the systematic review of institutions, regulations, directives, means and practices regarding investigative, adjudicative and executive procedures. The petition rights of the people and the inspection system of detention places are very useful devices for conducting systematic reviews of procedures regarding crimes of torture.

174. All citizens shall have the right to petition in writing to any government agency under the conditions prescribed by law (art. 26 of the Constitution).

(a) All citizens, including victims of some governmental measures, have the right to submit petitions to government authorities regarding the following: (i) redress of damages; (ii) demand for correction of irregularities committed by a public official, or for disciplinary action against or punishment of a public official; (iii) enactment, amendment or repeal of laws, orders or regulations; (iv) operation of public institutions or facilities; and (v) any other matters which fall under the authority of public organizations (art. 4 of the Petition Act). Therefore, all citizens may submit petitions requesting authorities to address institutions and to examine regulations, directives, means and practices regarding acts of torture;

(b) The State shall be obligated to examine all petitions (art. 26 of the Constitution). In addition, article 89, subparagraph 15, of the Constitution provides that examination of petitions pertaining to executive policies which are submitted or referred to the Executive shall be referred to the State Council for deliberation. Furthermore, the Petition Act obligates all government offices to accept and examine petitions faithfully, fairly and promptly, and to notify the petitioner of the results thereof (art. 9 of the Petition Act). Such notification enhances the efficiency of the petition system;

(c) In addition, persons may submit petitions to the National Assembly, with the introduction of an Assemblyman. Petitions to the National Assembly shall be examined by a competent committee, and a petition which is accepted by the National Assembly but deemed necessary to be settled by the Government shall be transferred to the Government with the opinion of the National Assembly. In such cases, the Government shall settle the petition and report without delay the results of the settlement to the National Assembly (arts. 123 and 126 of the National Assembly Act);

(d) No person shall be treated with discrimination or forced to suffer any consequences because he has filed a petition (art. 11 of the Petition Act).

175. On 7 January 1994, the Republic of Korea enacted the Fundamental Act Relating to Administrative Regulations and Civil Appeals Affairs, allowing persons to file civil appeals against administrative agencies, so that illegal or unjust acts may be eliminated through institutional improvements.

(a) A person may file a civil appeal against administrative agencies in relation to illegal, unfair or negative actions and unreasonable regulations of administrative agencies which infringe upon the rights of the people or are inconvenient or burdensome to the people. Therefore, questions regarding torture may also be the subject of civil appeals;

(b) Administrative agencies shall address civil appeals before all else (art. 9, para. 1, of the Fundamental Act Relating to Administrative Regulations and Civil Appeals Affairs). If they reject the appeal, or deem it impossible to accept the appeal, the administrative agencies shall notify appellants of the fact, with legal and factual reasons for the decision indicated in the notification (art. 12, para. 1, of the Act), as administrative agencies cannot reject petitions for institutional improvements on unreasonable grounds;

(c) Furthermore, questions related to torture may, according to the circumstances, be the subject of applications for consultation, investigation and addressing of civil appeals submitted to the Committee for Treatment of National Difficulties, under the authority of the Prime Minister (art. 15 of the Act).

176. Specifically, the Criminal Execution Act provides that in a case in which an inmate or detainee pending trial protests against his treatment, he may file a petition with the Minister of Justice and with public officials who conduct patrol examinations (art. 6, para. 1 of the Criminal Execution Act). It is also provided that public officials shall handle an application of a detainee according to the orders of the person responsible for the matter, after addressing it promptly and reporting it to him. Officials are also obligated not to reject applications by inmates on unreasonable grounds in relation to their treatment (art. 27 of the Standing Rules for Guard Duty).

177. Juveniles under protection who are held in a juvenile reformatory who have objections regarding their treatment may submit petitions to the Minister of Justice (art. 11 of the Juvenile Reformatory Act). Even persons who are held in detention places such as military prisons may make petitions to the General Chiefs of Staff or patrol inspectors if they wish to protest against their treatment (art. 4 of the Military Criminal Execution Act).

178. In all immigration control offices, consultation rooms are established for complaints by foreigners. Therefore, if aliens who have illegally entered the Republic of Korea request consultations for their grievances, immigration officers shall comply with their requests in a faithful manner, and they shall cooperate with competent governmental agencies in settling the matter within a short time, making efforts to protect the human rights of foreigners.

179. As mentioned in paragraphs 85 and 86, inspection of detention places in investigative agencies by a public and military prosecutor (art. 198-2 of the Penal Procedure Code; art. 280 of the Martial Court Act) and inspection of prisons by prosecutors and judges, both public and military (art. 5 of the Criminal Execution Act; art. 3 of the Military Criminal Execution Act; art. 10 of the Juvenile Reformatory Act) contribute much to improving institutions, regulations, directives, and practices in relation to the issue of torture.

180. In addition, the Ministry of Justice, the Public Prosecutor's Office, the National Police Agency and prisons have established their own inspectors' rooms and employed persons in charge of planning, resulting in continuous improvements and the elimination of inappropriate practices and institutions.

Article 12

181. All relevant laws of the Republic of Korea guarantee the immediate and unbiased investigation by public prosecutors or judicial police officers of cases where there are reasonable grounds to believe that acts of torture have been committed.

182. Circumstances which prompt investigations of crimes of torture include arrest of flagrant offenders, autopsies, questioning, investigation reports, rumours, and people's complaints, accusations, self-denunciation, petitions, reports of crimes, etc. In any case, if there are reasonable grounds to suspect that a crime has been committed, investigative agencies shall conduct an investigation into the crime, the facts of the crime and the evidence.

183. To assure fairness in investigations, a public prosecutor, who has the same qualifications as a judge and whose status is guaranteed, presides over the investigations. Investigators, police administrative officials, police superintendents, police captains or police lieutenants shall investigate crimes as judicial police officers under the authority of the public prosecutor. In addition, police sergeants or patrolmen shall assist in the investigation of crimes as judicial police assistants under the authority of a public prosecutor or judicial police officers.

184. Furthermore, to assure fairness in investigations, the Penal Procedure Code provides for the right to refuse to answer questions (art. 200, para 2, of the Penal Procedure Code), the right to interview with a defence counsel (art. 34 of the Code), the right to be notified of arrest and detention (art. 200-5, 209 and 87 of the Code), and the right to interview the accused detainee and to apply for defence counsel (arts. 200-5, 209, 89 and 90 of the Code).

185. In particular, the National Security Planning Agency Act strictly provides that staff members of the National Security Planning Agency who take charge of investigations shall respect the above-mentioned rights of the accused (art. 11, para. 2, of the National Security Planning Agency Act).

186. In order to facilitate prompt investigation, the Penal Procedure Code empowers a public prosecutor to command and direct the investigation, thus allowing him to preside over the investigation (art. 195 of the Penal Procedure Code) and limits the detention period either by a prosecutor or by a judicial police officer (arts. 202 and 203 of the Code). Civil complaints of the detainee, as mentioned in relation to article 11 of the Convention, also guarantee prompt investigations.

## Article 13

187. The laws of the Republic of Korea ensure the safeguarding of petitions or accusations by victims of torture and observe article 13 of the Convention by protecting the victims from unreasonable treatment or intimidation as a consequence of their petitions, accusations or any evidence given.

188. A person who has been injured as consequence of an offence may file a complaint with investigative agencies (art. 223 of the Penal Procedure Code). The legal counsel of a person who has been injured may file a complaint independently; on the death of the injured party, his spouse or any of his lineal relatives or brother or sister may file a complaint (art. 225 of the Code); and a complaint may be lodged or withdrawn by proxy (art. 236 of the Code). Any person who believes that an offence has been committed may lodge an accusation. If a public official, in the course of his duty, believes that an offence has been committed, he shall lodge an accusation (art. 234 of the Code).

189. A complaint and accusation shall be filed with a public prosecutor or judicial police officer, in writing or orally. On receipt of an oral complaint or accusation, a public prosecutor or a judicial police officer shall draw up a protocol (art. 237 of the above Code). In a case in which a complaint or accusation has been lodged, the public prosecutor must decide whether or not to institute a public prosecution, withdraw public prosecution, or send the case to a public prosecutor of another public prosecutor's office, and the public prosecutor shall inform the complainant or accuser in writing of the reasons thereof within seven days after the said decision has been made (art. 258, para. 1, of the Code). If it has been decided not to institute a public prosecution, the public prosecutor shall, upon the request of the complainant or accuser, promptly inform him of the reasons thereof in writing within seven days (art. 259 of the Code).

190. Once a complaint or accusation against an offender is lodged, the public prosecutor and the judicial police officer must promptly initiate an investigation.

(a) In a case in which a public prosecutor investigates a crime based on a complaint or accusation, he shall determine whether or not public prosecution shall be instituted within three months after the complaint or accusation has been made (art. 257 of the Code);

(b) According to the Penal Procedure Code, when a judicial police officer receives a complaint or accusation, he shall promptly investigate the matter pertaining thereto and transfer the relevant documents and evidence to a public prosecutor (art. 288 of the Code). In addition, according to the Rules Concerning the Performance of Judicial Police Officials, in case of an investigation by a judicial police official based on a complaint or accusation, the investigation shall be completed within two months. If it is not completed within two months, it shall come under the direction of the public prosecutor of the competent district public prosecutor's office or the branch office (art. 39 of the Rules Concerning the Performance of Judicial Police Officials).

191. In particular, when a complaint is filed at a police station, an investigation is immediately initiated under special regulations as delineated below:

(a) When a person files a complaint, the police station shall receive it for investigation, without regard to jurisdiction. Necessary civil complaint documents brought in directly by the complainant shall be registered at the civil complaints room, then shall be handed over to the competent department of the police station. The key officers shall appoint an investigator to write up a supportive protocol without delay, and they shall sign the protocol, in order to avoid the inconvenience of a repeated process in writing up the protocol (Manual for Police Affairs, 8-2);

(b) Despite limitations on time periods as prescribed in relevant laws, a case based on an accusation is expeditiously settled within a month of the date on which the accusation was lodged, unless a time extension is necessary (art. 66 of the Rules for Investigating Crimes);

(c) Once the investigation is completed, the civil complainant must be immediately informed of the results thereof. If handling of the case is delayed, the civil complainant is to be updated promptly on the current situation (Manual for Police Affairs, 8-2).

192. For the protection of the complainant, etc. crimes such as murder, bodily injury, acts of violence, intimidation, false arrest and illegal confinement are punished with aggravated penalties. Moreover, compensation is paid to the complainant according to legal provisions.

(a) A person who commits murder (art. 250, para. 1, of the Criminal Code) as revenge against another person for providing testimony, evidence, or serving as a witness in a trial or investigation, is punished by death or penal servitude for 10 years to life. In addition, a person who commits murder with the objective of suppressing a complaint or accusation, or who prevents the provision of truthful evidence or testimony, or creates false evidence or testimony in the course of a trial, shall receive the same punishment as delineated above (art. 5, para. 1, of the Act Concerning Aggravated Punishment Against Specified Crimes);

(b) A person who commits crimes of bodily injury (art. 257, para. 1, of the Criminal Code); violence (art. 260, para. 1, of the above Code); false arrest or illegal confinement (art. 276, para. 1, of the above Code); or intimidation (art. 283, para. 1, of the above Code) in order to accomplish the above-mentioned purposes, is punished by penal servitude for a minimum of one year (art. 2 of the above Act). The death of a person resulting from the above crimes shall be punished by penal servitude for three years to life (art. 3 of the above Act);

(c) Any person who forces an interview with or threatens to use force upon someone who holds crucial evidence, or upon a relative or family member, without just cause, is punished by penal servitude not exceeding three years or fines not exceeding 3 million won (art. 4 of the above Act);

(d) Compensation shall be given to victims of crimes committed in connection with the provision of essential evidence of testimony in the course of his or another person's trial and/or investigation, or compensation may be given to the victim's family (art. 3, para. 1, of the Act Concerning Aid to Criminal Victims).

193. In particular, in cases of acts of torture committed in crimes of rape, indecent acts by compulsion or murder, special measures are taken by the public prosecutor to protect the witness(es) (art. 7 of the Special Case Act Concerning Punishment Against Specified Serious Crimes).

(a) If it is recognized that a witness to a rape, indecent act, or murder committed by two or more people or through the use of deadly weapons is in danger of being physically harmed or his life threatened by the accused or other persons, the public prosecutor may request the chief of the competent police office to take the necessary measures to protect the witness (para. 1 of the above article);

(b) The witness and the chief judge may request of the public prosecutor such measures as mentioned above (paras. 2 and 3 of the article);

(c) The competent chief of the police station which receives such requests from the public prosecutor shall immediately take the essential measures to protect the witness. In addition, the public prosecutor shall be informed of what measures are taken (para. 4 of the article).

194. As mentioned above in paragraphs 88 and 91, should the public prosecutor decide not to institute a public prosecution, the victim may fully exercise his rights of objection through appeal and reappeal, constitutional petition and request of ruling, heightening the significance of the victim's right to lodge an accusation.

195. A person who objects to certain conditions of confinement which were effected by a public prosecutor or a judicial police officer may demand a court to address the matter in order to prevent confinement as a means of torture (art. 417 of the Penal Procedure Act).

196. On the other hand, current laws enable torture victims to file petitions in accordance with the relevant legal procedures. Furthermore, no person shall suffer any consequences because he has filed a petition (arts. 4 and 11 of the Petition Act). He is also able to institute civil complaints (art. 3 of the Fundamental Act Concerning Administrative Regulation and Civil Complaint Affairs). Inmates and unconvicted prisoners may also file petitions, and authorities shall not treat them unjustly merely because they have submitted petitions (art. 6 of the Criminal Execution Act; art. 8 of the Enforcement Ordinance concerning the Act). Juveniles under protection in a juvenile reformatory may file petitions in matters of unfair treatment (art. 11 of the Juvenile Reformatory Act).

197. Owing to the unique characteristics of the military, in which every order requires perfect obedience among the hierarchy of ranking officers, the

concealment of acts of torture or cruelty is a possibility in the military. In order to prevent these illegal acts of violence, the system of accusation and petition is reinforced in the following manner:

(a) According to article 300 of the Court Martial Act, if a military prosecutor decides not to indict a criminal, he shall explain to the complainant the reasons for non-indictment. As mentioned above in paragraph 89, if the military prosecutor decides not to prosecute, the complainant may apply to the High Court Martial for a ruling;

(b) Complaints by a soldier to his military barracks or to a higher military institution are accepted without revealing the soldier's identity. A person who witnessed or suffered injuries from acts of cruelty or torture is able to file an accusation anonymously. These measures contribute to the prevention of crimes such as torture in the military;

(c) If a complainant is dissatisfied with the circumstances of a case handled by the military prosecutor or the military judicial officer in relation to confinement, etc. he may request for the matter to be addressed to the competent court martial (art. 466 of the Court Martial Act);

(d) Even persons who are held in detention centres such as military prisons may, in protest of their treatment, file a petition with the General Chiefs of Staff or patrol inspectors (art. 4 of the Military Criminal Execution Act).

198. Since the Republic of Korea has acceded to the International Covenant on Civil and Political Rights and its Optional Protocol, victims of torture may send communications to organizations of the United Nations.

## Article 14

199. The Republic of Korea observes article 14 of the Convention which ensures that a victim of torture or his heir has the right to claim justified penal compensation according to the law.

200. In a case in which a criminal suspect or an accused person who has been placed under detention is not indicted as provided by law or is acquitted by a court, he shall be entitled to claim just compensation from the State under the conditions prescribed by law (art. 28 of the Constitution).

(a) The Penal Compensation Act provides the procedural details. A suspect who has been tortured while under some form of detention and subject to the decision by a public prosecutor not to institute a public prosecution, or a victim who has been injured as a consequence of torture and acquitted by a verdict of not guilty in his trial, shall have the right to claim compensation from the State (arts. 1 and 26 of the Penal Compensation Act), and his heir may also have the same right to claim said compensation (arts. 2 and 28 of the Act);

(b) To guarantee just compensation, when the court has to calculate the amount of compensation, loss of possible benefits, mental pain, physical

injury, intent or fault of the police, the prosecution, the court and other agencies, all circumstances shall be considered (art. 4, para. 2, of the Act).

201. In a case in which a person has sustained damages due to an unlawful act committed by a public official in the course of performing official duties, he may claim just compensation from the State or public organization under the conditions prescribed by law. In this case, the public official concerned shall not be immune from liability (art. 29, para. 1, of the Constitution).

(a) The National Compensation Act provides details concerning the compensation procedure. A victim who has suffered detention as a form of torture may claim compensation in accordance with the National Compensation Act (art. 2 of the National Compensation Act);

(b) The National Compensation Act provides that in the case of the deprivation of another person's life, compensation shall be given to the victim's heir (art. 3, para. 1, of the Act);

(c) The current National Compensation Act also provides details concerning medical care, medical treatment, survivor compensation, compensation for suspension of work, and consolation payments which guarantee just compensation (art. 3 through 3-2 of the Act). In particular, the courts of the Republic of Korea calculate losses of potential profits according to the Hoffman method, guaranteeing just compensation;

(d) In a case in which the victim is a foreigner, he may claim compensation from the Government of the Republic of Korea only if a mutual guarantee exists;

(e) In case liability is not recognized, even if torture has been committed, the victims of torture may claim compensation from the public officials according to the provisions of the Civil Code.

202. Article 30 of the Constitution provides that citizens who have suffered bodily injury or death due to the criminal acts of others may receive aid from the State under the conditions prescribed by law. The Act Concerning Aid to Criminal Victims provides more details of this provision. A criminal victim may also receive adequate remedies from the State, and claim just compensation. In case of the death of the victim, his family may claim the compensation.

203. On the other hand, if a court convicts a person of bodily injury, aggravated injury, or death or injury from violence, the court may order ex officio or through application by the victim or his heir, compensation for physical damages and medical fees as a consequence of the crimes (art. 25 of the Special Case Act Concerning the Precipitation of Lawsuit Procedure). Accordingly, victims of torture and other similar acts may be granted compensation without depending on general civil procedures.

204. The Government of the Republic of Korea is cognizant of article 14, paragraph 2, of the Convention, which states that there shall be no barriers to the rights of victims or other persons to claim compensation which is permitted under national law.

## Article 15

205. The Constitution and the laws of the Republic of Korea provide that if a confession is deemed to have been made against the defendant's will due to torture, the confession shall be inadmissible as evidence of guilt. Confirmation of this provision is also found in the case-laws of the courts.

206. The Constitution and the Penal Procedure Code provide that in a case in which a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in a case in which a confession is the only evidence of a defendant's culpability, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession (art. 12, para. 7, of the Constitution and art. 309 of the Penal Procedure Code). Furthermore, article 317 of the Penal Procedure Code provides that oral statements given by an accused person or a person other than the accused shall not be admitted as evidence unless the statements are made voluntarily, and a document which contains the said oral statements shall not be admitted as evidence unless it is proved that they were made voluntarily (art. 317 of the Penal Procedure Code).

207. A protocol prepared by a public prosecutor which contains the statement of a suspect or of any other person, or a protocol containing the results of inspection of evidence, prepared by a public prosecutor or a judicial police officer, may be introduced into evidence, if the genuineness thereof is established by the person who made the original statement at a preparatory hearing or during the public trial (art. 312, para. 1, the body of the above Code); a protocol containing the statement of the defendant, who was a suspect, may be introduced into evidence only in a case in which the statement was made under such circumstances as to guarantee its truth, regardless of statements made at a preparatory hearing or during public trial by the defendant (art. 312, para. 1, the proviso to the Code). A protocol containing the interrogation of a suspect and prepared by investigation authorities other than the public prosecutor may be used as evidence only if the defendant who has been a suspect, or the defence counsel, verifies the contents of the protocol at a preparatory hearing or during public trial (art. 312, para. 2, of the Code). In sum, current laws provide institutional mechanisms which prevent confessions deemed to have been made against the defendant's will from being admitted as evidence. Furthermore, a protocol containing the interrogation of a suspect by judicial police officers may not be used as evidence without the defendant's consent, and a protocol containing the interrogation of a suspect by a public prosecutor may be used only if the statement was made under such circumstances as to guarantee its truth.

208. The principal case-law of the Supreme Court concerning the nullification of the probative value of evidence is as follows:

(a) Assertion by the accused that his confession to the investigation authorities was made against his will owing to the use of torture may not seem believable. However, under special circumstances in which neither specific motivation for the crime nor clues to the investigation can be found, in which his statement of confession lacks objective rationality, and in which the material evidence of the crime does not correspond in general with the confession, there may be grounds to suspect that the confession of the accused was compelled through acts of violence and other measures, even though the

original cause of his confession to the investigation authorities was not related to acts of torture as the accused asserts (Supreme Court judgement 77 DO 210, rendered on 26 April 1977);

(b) Although the confession is not coerced during investigation in the presence of a public prosecutor, it shall not be admitted if the confession was obtained through torture by other investigation authorities; thus the suspect's involuntary disposition is maintained through to the stage of the public prosecutor's investigation (Supreme Court judgement 81 DO 2160, rendered on 13 October 1981; judgement 83 DO 497, rendered on 24 June 1983; judgement 92 DO 2409, rendered on 24 November 1992);

(c) The accused stated that he had been tortured by a judicial police officer during his statement in the courtroom and denied the voluntary nature of the confession and the statements, even submitting a medical certification of his claims. He also asserted the falsity of his confession and statement at the stage of the public prosecutor's investigation, but the assertion was rejected. Under these circumstances, the statement in a protocol containing the interrogation of the accused can hardly be regarded as credible (Supreme Court judgement 88 DO 680, rendered on 31 January 1989);

(d) Article 309 of the Penal Procedure Code provides that any confession of an accused extracted by torture, violence, intimidation or after unduly prolonged arrest or detention, or which is suspected to have been made involuntarily by means of fraud or other methods, shall not be admitted as evidence of guilt. Furthermore, cases of illegal acts which infringe upon the suspect's freedom to make a statement, as enumerated in the above article, shall, in principle, be deemed exceptional. Credibility of a confession shall be judged in consideration of the objective rationality of the contents of the statement, the motivation or the reason that led to the confession, circumstantial evidence other than the confession, and whether or not there exist any discrepancies or conflicts between other facts and the confession (Supreme Court judgement 82 DO 2413, rendered on 26 May 1985);

(e) The accused was detained at the police station during the investigation by a public prosecutor, and when interrogated by the public prosecutor at the outset he denied his crime. However, after the second interrogation session, he confessed to the crime without specific reasons. Afterwards, in his first court appearance, the accused again denied having committed the crime. Furthermore, witnesses testified that, while interviewing the accused, they learned that he had been tortured, saw his wounds, received a note in which he asked them to file a complaint of his sufferings, and that he had been ill during the entire night following the investigation. Under these circumstances, the confession of the accused is deemed to have been made involuntarily as a consequence of torture. Therefore, the admissibility of the confession as evidence is denied (Supreme Court judgement 84 DO 36, rendered on 13 March 1984).

209. In addition, the Constitution and the Penal Procedure Code provide that in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt (art. 12, para. 7, of the Constitution; art. 310 of the Penal Procedure Code). These provisions prohibit coercive methods such as torture to be used in investigations.

210. The Penal Procedure Code provides that when it is established by a final judgement that an offence has been committed, in connection with official functions, by a public prosecutor or judicial police officer who participated in the institution of a public prosecution or in the investigation which formed the basis of the public prosecution, a request for reopening procedures may be made (art. 407, subpara. 7, of the Penal Procedure Code). This indicates that when a final judgement proves that persons who participated in investigations have committed crimes of torture, victims of torture may request the reopening of procedures.

Article 16

211. The Republic of Korea recognizes that the concept of cruel and inhuman or degrading treatment or punishment is not as significant as that of torture; however, all the above acts are regarded as violations of human worth and dignity and human rights.

212. The obligation in the first sentence of article 16, paragraph 1, of the Convention is realized in article 10 of the Constitution which provides that "all citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."

213. The Government of the Republic of Korea has taken various measures to prevent the occurrence of cruel and inhuman or degrading treatment or punishment.

(a) In principle, it is the duty of the authorities to take all relevant measures to prevent cruel and inhuman or degrading treatment or punishment by public officials, etc. and to ensure that officials under their direction and supervision abide by those measures;

(b) As mentioned in relation to article 4 of the Convention, various provisions concerning the punishment of acts of violence or cruelty or bodily injury committed by a public officer and concerning disciplinary action against them may apply to cruel and inhuman or degrading treatment or punishment as well as to acts of torture, under article 1 of the Convention;

(c) As mentioned in relation to article 14 of the Convention, a victim injured as a consequence of torture or other cruel and inhuman or degrading acts by a public official, etc. may claim civil compensation from the State, etc.;

(d) Public officials, especially those who are engaged in investigative agencies such as police officers or prison officers, have an obligation to observe the law in the performance of their duties, being instructed to use minimum force and respect the human rights of those under protection, so that cruel and inhuman or degrading treatment or punishment is prevented.

214. The above sections alluding to articles 10, 11, 12 and 13 of the Convention may also refer to cruel and inhuman or degrading treatment or punishment under article 16 of the Convention. The laws of the Republic of Korea contain a series of provisions corresponding to the second sentence of article 16, paragraph 1, of the Convention.

215. The Government of the Republic of Korea recognizes that the role of the Convention is to prevent cruel and inhuman or degrading treatment or punishment, and to prevent any breach of the provisions of international conventions or domestic laws in relation to issues of extradition or deportation.

## CONCLUSION

216. The Republic of Korea, since its foundation in 1948, has continuously strived to guarantee and protect the lives of the people. These efforts have been undertaken while confronting the problems of economic poverty and threats to national security resulting from the division of the North and South.

217. Human rights conditions in the Republic of Korea have been greatly improved, compared to those in the past authoritarian era. Since the launch of the civilian Government in February 1993, great strides have been made towards achieving international standards. With regard to the prevention of torture and other cruel, inhuman or degrading punishment, relevant laws, regulations and institutions have been amended and improved. In this regard, the cases in which four investigative police officers have been arrested and sentenced to terms of penal servitude ranging from one and a half years to three years, as well as the award by the State of compensation to Mr. Geun Tae Kim of 45 million won, reflect the will and desire of the Republic of Korea to eliminate torture.

218. However, the Republic of Korea has yet to solve some problems with regard to human rights. The Government of the Republic of Korea recognizes that guarantees of human rights cannot be achieved within a short time, and that there remains much to be accomplished. Human rights progress should accompany all developments in society. Therefore, the continuous efforts of the entire community are necessary to achieve human rights guarantees.

219. Given this recognition, the Government of the Republic of Korea is doing its best to improve upon inadequate and unacceptable practices and institutions. Such efforts are believed to be an absolute necessity if the Republic of Korea is to realize a just society which guarantees human worth and dignity and human life to everyone.

220. In addition, the Republic of Korea has made efforts to enhance the welfare and human rights of the people in an affirmative and progressive manner, signifying improvements in the quality of life in all areas, including the environment, education, culture, medical care and labour. Improvements must not be merely limited to human rights in political areas, such as liberation from the intervention of State power.

221. Furthermore, the Republic of Korea will continue to participate in international efforts to promote and enhance human rights as a universal value.

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